



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

HAZARDOUS MATERIALS TRANSPORTATION ACT REAUTHORIZATION

P76-77

HEARING BEFORE THE COMMITTEE ON SURFACE TRANSPORTATION AND MERCHANT MARINE OF THE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE ONE HUNDRED FIFTH CONGRESS FIRST SESSION

MAY 8, 1997

the use of the Committee on Commerce, Science, and Transportation



STANFORD
LIBRARIES

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1997

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-055908-1

DEPOSITORY 1

JAN 21 1998

Stanford University
Jonsson Library

ARIES
5-6004

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FIFTH CONGRESS

FIRST SESSION

JOHN McCain, Arizona, *Chairman*

TED STEVENS, Alaska
CONRAD BURNS, Montana
SLADE GORTON, Washington
TRENT LOTT, Mississippi
KAY BAILEY HUTCHISON, Texas
OLYMPIA J. SNOWE, Maine
JOHN ASHCROFT, Missouri
BILL FRIST, Tennessee
SPENCER ABRAHAM, Michigan
SAM BROWNBACK, Kansas

ERNEST F. HOLLINGS, South Carolina
DANIEL K. INOUE, Hawaii
WENDELL H. FORD, Kentucky
JOHN D. ROCKEFELLER IV, West Virginia
JOHN F. KERRY, Massachusetts
JOHN B. BREAUX, Louisiana
RICHARD H. BRYAN, Nevada
BYRON L. DORGAN, North Dakota
RON WYDEN, Oregon

JOHN RAIDT, *Staff Director*

MARK BUSE, *Policy Director*

IVAN A. SCHLAGER, *Democratic Chief Counsel and Staff Director*

JAMES S.W. DREWRY, *Democratic Chief Counsel*

SUBCOMMITTEE ON SURFACE TRANSPORTATION AND MERCHANT MARINE

KAY BAILEY HUTCHISON, Texas *Chairman*

TED STEVENS, Alaska
CONRAD BURNS, Montana
OLYMPIA J. SNOWE, Maine
SPENCER ABRAHAM, Michigan
JOHN ASHCROFT, Missouri

DANIEL K. INOUE, Hawaii
JOHN B. BREAUX, Louisiana
BYRON L. DORGAN, North Dakota
RICHARD H. BRYAN, Nevada
RON WYDEN, Oregon

(II)

CONTENTS

	Page
Hearing held May 8, 1997	1
Statement of Senator Hutchison	7
Prepared statement	8
Statement of Senator Wyden	1

WITNESSES

Chipkevich, Robert, Chief, Hazardous Materials/Pipeline Division, Office of Surface Transportation, National Transportation Safety Board	8
Prepared statement	10
Coyner, Kelley S., Deputy Administrator, Research and Special Programs Administration, Department of Transportation	3
Prepared statement	5
Harvison, Clifford, president, National Tank Truck Carriers, Inc.	22
Prepared statement	23
Hilton, Cynthia, executive director, Association of Waste Hazardous Materials Transporters	19
Prepared statement	21
Lane, Charlotte R., chairman, Public Service Commission of West Virginia	15
Prepared statement	17

APPENDIX

Response to written questions of Kelley S. Coyner submitted by:	
Hon. Kay Bailey Hutchison	30
Hon. Conrad Burns	38
Hon. Ernest F. Hollings	39
Hon. Daniel K. Inouye	41
Hon. Ron Wyden	41
Response to written questions of Charlotte R. Lane submitted by:	
Hon. Kay Bailey Hutchison	42
Hon. Ernest F. Hollings	42
Response to written questions of Cynthia Hilton submitted by:	
Hon. Kay Bailey Hutchison	44
Hon. Ernest F. Hollings	46
Hon. Daniel K. Inouye	47
Response to written questions of Robert Chipkevich submitted by:	
Hon. Kay Bailey Hutchison	48
Hon. Ernest F. Hollings	71
Hon. Daniel K. Inouye	72
Response to written questions of Clifford J. Harvison submitted by:	
Hon. Kay Bailey Hutchison	73
Hon. Ernest F. Hollings	74
Hon. Daniel K. Inouye	75
Other Material Submitted for the Hearing Record:	
Association of American Railroads, prepared statement	75
Compressed Gas Association, Inc., prepared statement	78
Hollings, Hon. Ernest F., U.S. Senator from South Carolina, prepared statement	29
Inouye, Hon. Daniel K., U.S. Senator from Hawaii, prepared statement ...	29

HAZARDOUS MATERIALS TRANSPORTATION ACT REAUTHORIZATION

THURSDAY, MAY 8, 1997

**U.S. SENATE,
SUBCOMMITTEE ON SURFACE TRANSPORTATION AND
MERCHANT MARINE,
COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION,
Washington, DC.**

The subcommittee met, pursuant to notice, at 10:35 a.m. in room SR-253, Russell Senate Office Building, Hon. Ron Wyden presiding.

Staff members assigned to this hearing: Ann Begeman, Charlotte Casey, professional staff members; Clyde Hart, minority senior counsel; and Carl W. Bentzel, minority staff counsel.

OPENING STATEMENT OF HON. RON WYDEN, U.S. SENATOR FROM OREGON

Senator WYDEN. The subcommittee will come to order. Today, the subcommittee begins the process of reauthorizing the programs of Research and Special Programs Administration, the agency that oversees the transportation of hazardous materials, efforts to maintain the safety of the Nation's citizens is obviously one of the highest obligations of the U.S. Senate.

The hazardous materials transportation regulation is not as well-known to many people as other types of transportation regulation. Its functions obviously are no less necessary. Fortunately, the Department of Transportation's RSPA has stringent standards for the transportation of hazardous materials, and it is no accident that overall safety record for the movement of hazardous materials is excellent.

However, to maintain this record it is essential to always search for ways to enhance safety. That is the reason that this is an important hearing. To search for ways to make safety even more certain and continue to try to refine the process of protecting our citizens is our challenge. RSPA will give us an overview of its efforts to date.

In the wake of the ValuJet tragedy a year ago next week, I especially want to hear what measures the agency has undertaken to ensure that such tragedies do not happen again. The National Transportation Safety Board provides valuable input into the safety process and will, we are sure, tell us what else should be done to enhance safety.

Additionally, the presence of the National Tank Truck Carriers Association, the hazardous waste transporters, and the West Virginia PSC will give us new information and insights on reauthorization from their perspective.

I understand that each organization has reservations about the administration's proposal to reauthorize RSPA through the vehicle of the Hazardous Materials Transportation Safety Reauthorization Act. I hope that all the witnesses will look on this hearing as an opportunity to work with the subcommittee to bring about higher levels of safety.

The National Transportation Safety Board is not an agency that normally gathers headlines, but they do especially important work, and we are anxious to have their input.

Let me also say that I am especially concerned about some of the transportation safety provisions in S. 104, the Nuclear Waste Policy Act, and the concern is that there is a different standard for nuclear waste shipments than those that normally apply under the Hazardous Materials Transportation Act.

As the author of the transportation safety provisions of S. 104, I know that the intent of these provisions was to have the hazardous materials safety requirements apply to nuclear waste transportation using at least as protective a standard as is applied to other hazardous materials.

More importantly, I think, any fair reading of these provisions can only lead to the conclusion that the Hazardous Materials Transportation Act standards apply to nuclear waste shipments, except that S. 104 calls for greater care to be taken so as to avoid populated areas.

First, section 203 of S. 104 clearly requires normal Hazardous Materials Transportation Act standards to apply to nuclear waste shipments. It states, and I quote, "Any person that transports spent nuclear fuel or high level radioactive waste should comply with all requirements governing such transportation issued by the Federal, State, and local Governments, and Indian tribes in the same way and to the same extent that any person engaging in that transportation must comply with such requirements."

Even though this legislation seems clear on its face, the Department of Transportation apparently believes there is some question about the applicability of the Hazardous Materials Transportation Act to nuclear waste shipments under S. 104.

The Department's Research and Special Program Administration apparently is confused by a clause in S. 104 that calls for transportation routes to be used "to the maximum practical extent consistent with practical requirements governing transportation of hazardous materials."

Under only the most convoluted reading of the bill, one that totally ignores the context of this provision, could anyone conclude that this language creates a weaker standard for nuclear waste shipments. Read in context, this language says that nuclear waste shipments should avoid populated areas to the extent that this can be done consistent with other requirements for hazardous materials shipments.

So we are anxious to hear further from RSPA with respect to the applicability of this bill to hazardous materials. It seems to me that

the language that was added to this legislation strengthens our efforts to ensure that these materials are moved safely, and we will have some questions for the RSPA witnesses before too long.

Let me also say that the chair of our subcommittee, our able chair, Senator Hutchison, was called away to be on the floor, and she wants all the witnesses to know that she very much had wanted to be here. She is going to ask a number of questions for the record, and we are going to have, in the interests of time, all of our panel members come forward now.

So let us begin, if we might, with the Hon. Kelley S. Coyner, Deputy Administrator, Research and Special Programs Administration, Department of Transportation, and we welcome your remarks.

STATEMENT OF KELLEY S. COYNER, DEPUTY ADMINISTRATOR, RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION, DEPARTMENT OF TRANSPORTATION; ACCOMPANIED BY ALAN ROBERTS, ASSOCIATE ADMINISTRATOR FOR HAZARDOUS MATERIALS SAFETY

Ms. COYNER. Good morning, Senator Wyden, and I would say other members of the subcommittee, but I will welcome them when they come.

I am Kelley Coyner, the Deputy Administrator of the Research and Special Programs Administration. I appreciate the opportunity to update you on the Department's ongoing efforts to improve the safety of transporting hazardous materials. Today, I have with me Mr. Alan Roberts, our Associate Administrator for Hazardous Materials Safety.

The transportation of hazardous material is a critical part of the U.S. economy. There are many ways to measure it, but perhaps the most important way is for individuals who are not sensitive to the things that they use every day being hazardous materials. They play an extremely important role in our every day life.

Hazardous materials include such things as radiopharmaceuticals, which are vital for medical treatment, cosmetics, and cleaning supplies, as well as a number of chemicals that are important for our manufacturers Nationwide. Getting these products to the people who need them requires literally hundreds of thousands of hazardous material shipments per day. The public counts on these shipments being made safely.

The program we have developed for hazardous materials transportation provides a very good level of safety. However, we are always looking for opportunities to strengthen the program.

Safety is Secretary Slater's first priority, and it is the first priority for our hazardous materials transportation program. Today, I would like to emphasize three principal areas. First, we have comprehensive standards for safe transportation of hazardous materials and we are looking for ways to strengthen those standards.

Second, we must ensure that shippers and carriers understand our standards and know how to comply with them, and finally, we must detect those people who refuse or neglect to comply with safety requirements and stop their illegal activities.

A key to the good safety record for hazardous materials transportation is a strong, uniform set of rules that is consistent among the States and across international borders. During the last year we

have continued to enhance our safety standards on a number of fronts.

As required by Congress, we issued a final rule applying our safety standards to interstate highway shipments of hazardous materials. The rule contains common sense provisions that recognize the needs of small businesses, farmers, and others, by including important exceptions in areas that do not have a significant impact on safety.

We have also worked to improve the safety of hazardous materials by air. Working with the Federal Aviation Administration after the ValuJet accident last spring, we banned the carriage of oxygen generators as cargo aboard passenger-carrying aircraft.

We have also exceeded the National Transportation Safety Board's recommendations by proposing to prohibit the carriage of oxidizers on passenger-carrying aircraft in inaccessible compartments on cargo aircraft. Very soon, we plan to issue a supplemental notice further analyzing the need to prohibit the carriage of oxidizers aboard passenger aircraft in other compartments.

On the international front, we are also pursuing strong, uniform standards. These standards provide our international neighbors and Americans overseas with the same level of safety they enjoy here and promote trade for U.S. businesses by removing inconsistent packaging labeling and other requirements from the international transportation system.

Maintaining strong safety standards is an important first step. These standards are not helpful, however, if shippers and carriers do not understand them or do not know how to ensure that they are in compliance with the regulations. This is especially true in hazardous materials transportation, because many companies are small and ship hazardous materials infrequently, perhaps only once or twice per year.

Because of the threat posed by undeclared shipments of hazardous materials, we are committed to investing resources to inform shippers and carriers about our safety standards.

Following the tragic ValuJet accident last year, which appears to have been caused by an undeclared shipment of hazardous materials, we expanded our training and public education efforts in the aviation field in particular.

We are particularly proud of the distribution of millions of copies of a brochure which explain which materials cannot be brought aboard aircraft by passengers. This brochure, *These May Fly and These May Not Fly*, makes it very easy for each individual passenger to know what is permissible and safe to carry in their baggage.

In our reauthorization bill, we are proposing to allow States up to 25 percent of their hazardous material grant funds to assist small businesses with regulatory compliance. We are upgrading our Internet site and our hazardous materials and information center to allow for public access to hazardous materials transportation information.

Although training and public education are valuable tools for enhancing compliance, there will always be people who refuse or neglect to comply with our safety standards. Consequently, we support an aggressive enforcement program.

With the support of the President and Congress we obtained and have moved rapidly to fill 15 new hazardous materials inspector provisions. We established a RSPA hazardous materials safety regional office in Atlanta, a major hub of hazardous materials activity. Last summer, we conducted joint inspections with the FAA at aviation repair stations.

With respect to undeclared hazardous materials shipments our reauthorization proposal specifically authorizes DOT enforcement personnel to open packages that most likely contain hazardous materials and evaluate their contents. Our proposal would also authorize DOT to issue emergency orders where there is a situation involving a significant risk of death, personal injury, or harm to the environment.

RSPA is committed to working with all segments of the hazardous materials community to prevent deaths, injury, and property damage, and to safeguard our environment. At the Federal, State, and local levels we continue to strengthen existing programs and cultivate new programs that bring us closer to achieving our goal, improved safety in the transportation of hazardous materials.

Thank you, and I would be pleased to answer any questions you might have.

[The prepared statement of Ms. Coyner follows:]

PREPARED STATEMENT OF KELLEY S. COYNER, DEPUTY ADMINISTRATOR, RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

Good morning, Chairman Hutchison and members of the subcommittee. I am Kelley Coyner, Deputy Administrator of the Research and Special Programs Administration (RSPA). Thank you for the opportunity to update you on the Department of Transportation's ongoing efforts to improve the safety of transporting hazardous materials. With me today is Mr. Alan Roberts, RSPA's Associate Administrator for Hazardous Materials Safety.

The transportation of hazardous materials is a critical part of America's economy. One way to measure that importance is by noting that non-petroleum chemicals constitute roughly a \$1.4 trillion global industry, with the U.S. chemical industry accounting for about 25 percent of the world's total. Getting these products, such as radiopharmaceuticals, cosmetics, and cleaning supplies, to the people who need them requires literally hundreds of thousands of hazardous materials shipments per day. The public counts on these shipments being made safely.

The program we have developed for hazardous materials transportation provides an excellent level of safety. Despite the heavy volume of hazardous materials shipments, injuries and fatalities resulting from hazardous materials transportation are rare. We recognize, however, that there is more that can be done. Safety is Secretary Slater's first priority, and it is the first priority for our hazardous materials transportation program.

Today, I want to emphasize three main points. First, we have comprehensive standards for the safe transportation of hazardous materials, and we are always looking for ways to improve those standards. Second, we must ensure that shippers and carriers understand our standards and know how to comply with them. Finally, we must detect people who either refuse or neglect to comply with safety requirements and we must stop their illegal shipments.

PROTECTING THE PUBLIC—STRONG SAFETY STANDARDS

Hazardous materials transportation has an excellent overall safety record. Hazardous materials transportation incidents resulting in injury or death are relatively rare. A key to this good safety record is a strong, uniform set of rules that is consistent among the States and across international borders.

During the past year, we continued to enhance our safety standards on a number of fronts. As required by Congress, we issued a final rule applying our safety standards to intrastate highway shipments of hazardous materials. This rule requires *intrastate* hazardous materials highway shippers and carriers to comply with the same standards as *interstate* transporters, thus providing the public with a uniform

standard based upon the material being transported, not upon whether the shipment crosses a State line. The rule also contains common-sense provisions that recognize the needs of small businesses, farmers, and others by including important exceptions that do not have a significant impact on safety. Under a "materials of trade" provision, small quantities of hazardous materials may be transported by landscapers, exterminators, and others with minimal Federal regulation. These shipments, however, may be subject to State or local requirements.

We also worked to improve the safety of hazardous materials transportation by air. Working with the Federal Aviation Administration after the ValuJet crash last Spring, we banned the carriage of oxygen generators as cargo aboard passenger-carrying aircraft. Moreover, we exceeded a National Transportation Safety Board recommendation by proposing to prohibit the carriage of oxidizers on passenger-carrying aircraft and in inaccessible compartments on cargo aircraft. Very soon we plan to issue a supplemental notice further analyzing the need to prohibit the carriage of oxidizers aboard passenger-carrying aircraft in Class B and C cargo compartments.

On the international front, we also are pursuing strong, uniform standards. This provides our international neighbors and Americans overseas with the same level of safety they enjoy here, and promotes trade for U.S. businesses by removing inconsistent packaging, labeling, and other requirements from the international transportation system. For example, we recently published a final rule to make our regulations consistent with certain United Nations Recommendations on the Transport of Dangerous Goods. We plan to continue working with Mexico and Canada on the development of compatible regulations, and our objective is to have fully developed, three-nation standards by 2001.

ENSURING THAT PEOPLE UNDERSTAND OUR SAFETY STANDARDS AND KNOW HOW TO COMPLY WITH THEM

Maintaining strong safety standards is an important first step. These standards are useless, however, if shippers and carriers do not understand them or do not know how to ensure that they are in compliance with the regulations. This is especially true in hazardous materials transportation, because many companies are small and ship hazardous materials infrequently, perhaps only once or twice per year. This may lead to a hazardous material being recklessly loaded into an unmarked box, providing carriers, inspectors, or emergency responders with no way of knowing that a potentially dangerous material is present. Because of the real threat posed by undeclared shipments of hazardous materials, we are committed to investing resources to inform shippers and carriers about our safety standards and to help them stay in compliance with those standards.

Following the tragic ValuJet accident last year, which appears to have been caused by an undeclared shipment of hazardous materials, we enhanced our outreach efforts in aviation. We distributed millions of copies of a brochure explaining what materials cannot be brought on board an aircraft by passengers. We are also producing an awareness training video and a training module to promote compliance by entities who offer or transport hazardous materials by air.

In our reauthorization bill, we are proposing to allow States to use up to 25 percent of their hazardous material grant funds to assist small businesses with regulatory compliance. We are upgrading our Hazardous Materials Information System to allow the public easier access to hazardous materials transportation information. At the same time, we are expanding our Hazardous Materials Information Center to more effectively and expeditiously answer questions from the public. We are continually upgrading our Hazardous Materials Safety Internet site to provide better access to a vast array of information, including copies of rules, upcoming training classes provided by the Transportation Safety Institute, and general information on the program, including information on how to contact us with questions or concerns.

STRONG ENFORCEMENT AND STOPPING ILLEGAL SHIPMENTS

Although outreach is a valuable tool for enhancing compliance, there will always be people who either refuse or neglect to comply with our safety standards. Consequently, we strongly support an aggressive enforcement program.

With the support of the President and Congress, we obtained and have moved rapidly to fill fifteen new hazmat inspector positions. We established a RSPA Hazardous Materials Safety Regional Office in Atlanta, a major hub of hazardous materials activity. Last summer, we conducted joint inspections with FAA at aviation repair stations.

With respect to undeclared hazardous materials shipments, our reauthorization proposal specifically authorizes DOT enforcement personnel to open packages that

most likely contain hazardous materials, take samples sufficient for analysis of apparently hazardous materials, analyze the samples, and prohibit further transportation when an imminent hazard exists until the hazardous qualities of the material have been determined. Our proposal also would authorize DOT to issue emergency orders when there is a situation involving a significant risk of death, personal injury, or harm to the environment. Finally, it would provide for judicial review of final agency actions by U.S. Courts of Appeal, not Federal district courts, and thus clarify that new trials are not authorized.

OTHER PROPOSALS

Our bill seeks authority to enter into grants, cooperative agreements, and other transactions to conduct training, planning, research, and other activities that enhance hazardous materials safety. This proposal will improve our ability to develop and sustain long-term partnerships on a variety of important issues. Our bill also seeks to change the term "exemption" to "special permit." We grant "exemptions" to our regulations where the applicant demonstrates that an alternative device or system will provide a level of safety that is equivalent to the underlying regulations. The term "special permit" more accurately reflects this procedure. In addition, we are proposing to change the renewal period for these permits from two to four years, saving substantial paper work for both government and industry.

CONCLUSION

RSPA is committed to working with all segments of the hazardous materials community to prevent deaths, injuries, and property damage, and to safeguard our environment. We are committed to developing and maintaining strong regulatory standards, conducting outreach to raise awareness of those standards, and conducting vigorous enforcement to ensure that violators and illegal shipments are stopped. At the Federal, State and local levels, we continue to strengthen existing programs and cultivate new programs that bring us closer to achieving our goal—improved safety in the transportation of hazardous materials. Thank you, and I would be pleased to answer any questions.

Senator WYDEN. We are very pleased that our chair is here, and would want her to comment if she wishes.

STATEMENT OF HON. KAY BAILEY HUTCHISON, U.S. SENATOR FROM TEXAS

Senator HUTCHISON. Thank you, Mr. Wyden. I want to say first of all how much I appreciate Senator Wyden taking the reins this morning, because I am in action on the floor. We've had a bit of a delay, and so I wanted to come back over. But I want you to stay in the chair and I want to thank you for the interest you have in surface transportation.

I think you are just one of our very best Members on this issue. You and I share a great interest in rail and surface transportation, as well as the merchant marine that affects both of our States so much, so thank you very, very much.

Let me also say that because of my experience on the National Transportation Safety Board hazardous materials safety has been something on my agenda for a long time. I remember—of course, we all remember the ValuJet crash and the part that hazardous materials played in that.

But I also remember a truck that overturned in Houston, TX my home State that released hazardous, toxic fumes. I remember so well that people's first reaction to smelling these fumes was to open the windows, when in fact that was exactly the wrong thing to do.

According to the NTSB, we learned that what we should have been saying on the radio is, shut off the air conditioners and keep the windows closed and try to keep the toxic fumes from coming inside.

These are the things we learn that we need to put out there, and we certainly are pleased with the general record of transporting hazardous materials. We have taken such care really and we have had very few accidents. Now we just have to fine-tune and make hazardous materials transportation safer then we'll reach the point where we have the fewest number of accidents that can harm people. Education efforts, as well as the safety precautions, are very important.

I have a statement that I will submit for the record, but I would like to hear as much of your testimony as possible.

So thank you very much, and thank you, Mr. Chairman, and if you would proceed.

[The prepared statement of Senator Hutchison follows:]

PREPARED STATEMENT OF HON. KAY BAILEY HUTCHISON, U.S. SENATOR FROM TEXAS

Annually more than a billion tons of hazardous materials—an estimated 500,000 hazardous materials shipments daily—are transported by land, sea, and air in the United States. The shipped materials are used in thousands of commercial manufactured products including chlorine for water treatment, ammonia for fertilizers, plastics, home siding, battery casings, leather finishes, fireproofing agents for textiles, and gasoline. The transport of hazardous materials is essential for our Nation's industrial economy.

The hazardous materials industry has a notable safety record, in part due to this intergovernmental cooperation, and also because of the safety efforts of companies involved in transporting hazardous materials. There are over 1.5 million State and local emergency response and enforcement personnel in the field dealing with hazardous materials issues.

On average, 8 to 15 deaths were attributed annually to releases of hazardous materials in transportation. Most of these fatalities involved truck accidents in which petroleum products ignited. In fact, until 1996, there had not been a single aviation hazardous shipment related fatality since before 1987.

Of course, the exception was the 1996 ValuJet crash. Undeclared dangerous oxygen canisters were loaded into the cargo hull of a ValuJet aircraft. The canisters ignited, a raging fire ensued and the plane crashed into the Florida Everglades killing all aboard. Aside from not being declared, the canisters also were not packaged or marked according to Federal regulations. The Department of Transportation has tightened aviation hazardous materials rules and I look forward to hearing testimony on the department's efforts.

At today's hearing, I would like to hear the witnesses' testimony on the state of safety in hazardous material transport, the Clinton Administration's proposed reauthorization proposal, and mostly, what this subcommittee needs to consider when drafting hazardous material transportation program reauthorization. I value your input and look forward to receiving your testimony.

Senator WYDEN. Thank you, and it is a pleasure to have a chance to be able to team up with you again, Madam Chair, and this is an excellent hearing, and I hope I am pronouncing the name of our next witness correctly, Mr. Robert Chipkevich.

Mr. Chipkevich is Chair of the Hazardous Materials/Pipeline Division, Office of Surface Transportation of NTSB, and please proceed.

STATEMENT OF ROBERT CHIPKEVICH, CHIEF, HAZARDOUS MATERIALS/PIPELINE DIVISION, OFFICE OF SURFACE TRANSPORTATION, NATIONAL TRANSPORTATION SAFETY BOARD

Mr. CHIPKEVICH. Thank you. Good morning Madam Chairwoman and Senator Wyden. It is a pleasure to appear today to discuss safety issues related to the transportation of hazardous materials.

I would like to discuss today four areas where the Board believes additional action should be taken to enhance the safe transportation of hazardous materials. Those areas include testing requirements for tank cars to identify structural defects before sudden and complete failure; rollover protection requirements for highway cargo tanks; crashworthiness of front heads on cargo tanks used to transport liquified flammable gases; and potentially lethal nonflammable gases, and practices, procedures, and training to identify undeclared shipments of hazardous materials.

In 1992, the Board investigated two structural tank car failures, January 18, 1992 in Dragon, MS, and March 25, 1992 in Kettle Falls, WA.

Because of those structural tank car failures, the Safety Board concluded that a special investigation on the inspection and testing of railroad tank cars was necessary. The Board concluded that the hydrostatic tests and visual inspections of tank cars at arbitrary intervals were not effective in detecting structural defects before sudden and complete failure.

The Safety Board recommended that the FRA, RSPA, and the industry work together to evaluate nondestructive testing techniques to determine how such techniques can best be applied for periodic testing and inspection of all tank cars that transport hazardous materials, and that the FRA then develop requirements for the periodic inspection and testing of tank cars to help ensure the detection of cracks before they propagate to critical length. We are pleased that the FRA, RSPA, and the industry have agreed and are cofunding several research projects in this area.

Between January and May 1991, the Safety Board investigated seven highway accidents in which DOT specification MC 306 and 312 cargo tanks overturned and hazardous materials were released through fittings rather than a breached tank.

As a result of a special investigation on cargo tank rollover protection, the Safety Board found deficiencies in cargo tank rollover protection requirements. In March 1992 the Safety Board recommended that the FHWA and RSPA improve the performance of rollover protection devices on bulk liquid cargo tanks.

Although FHWA has advised they are evaluating cargo tank crash modeling, we are concerned about progress on this issue and we have asked FHWA for additional information about the models.

The Safety Board is also concerned about the crashworthiness of front heads on cargo tanks used to transport liquified flammable gases and potentially lethal nonflammable compressed gases. On July 27, 1994 in White Plains, NY, a tractor cargo tank semitrailer loaded with 9,200 gallons of propane hit a bridge column, fracturing the front head and releasing propane. When ignited, a fire ball rose 200 to 300 feet in the air.

The tank was propelled northward about 300 feet and landed on a frame house, engulfing it in fire. The driver was killed and 23 people injured.

Because of not only the White Plains, NY accident but several previous accidents, including one that occurred April 29, 1975, in Eagle Pass, TX that resulted in 51 burn injuries and 16 fatalities, the Safety Board again called for action to improve the crashworthiness of cargo tanks.

In its response, the FHWA agreed with the Safety Board that the crashworthiness of the front head of cargo tanks used to transport these cargos needed further evaluation, and that it would request funds for this project.

ValuJet Flight 592 crashed on May 11, 1996, shortly after take-off from Miami International Airport. Five cardboard boxes being shipped as company material containing as many as 144 chemical oxygen generators, some with unexpended oxidizer cores, and three wheel tire assemblies had been loaded in the forward cargo compartment of Flight 592 shortly before departure.

Chemical oxygen generators, when transported as cargo, are considered a hazardous material and regulated under the DOT regulations classified as oxidizers. The Safety Board believes that even though safety recommendations were issued, that the practices, procedures, and training of personnel involved in the identification and handling of hazardous materials remains inadequate.

We also remain concerned that although the FAA and RSPA have banned oxygen generators from passenger airliners and have proposed a ban on other oxidizers, no action has yet been taken on the recommendation we issued 9 years ago to install smoke detectors and fire suppression equipment in cargo compartments that did not currently have them.

These recommendations, issued after the Nashville accident, were closed by the Board and classified as unacceptable action.

Last November, the airline industry announced it would voluntarily retrofit existing Class D cargo compartments with smoke detectors. Madam Chairwoman, we are carefully watching to see if this retrofitting will take place in a timely fashion.

That completes my statement. I will be pleased to answer any questions, and I would ask that my written testimony be accepted in full.

[The prepared statement of Mr. Chipkevich follows:]

PREPARED STATEMENT OF ROBERT CHIPKEVICH, CHIEF, HAZARDOUS MATERIALS/PIPELINE DIVISION, OFFICE OF SURFACE TRANSPORTATION, NATIONAL TRANSPORTATION SAFETY BOARD

Good morning Madame Chairwoman and Members of the Committee. It is a pleasure to appear today to discuss safety issues related to the transportation of hazardous materials.

The Safety Board has been concerned over the transportation of hazardous materials in all modes of transportation for many years. Over the past 20 years, however, we have seen many improvements made to enhance the safe transportation of hazardous materials. Some of those improvements include:

- enhanced packaging requirements, such as head shields and top and bottom shelf couplers on railroad tank cars carrying the most dangerous cargoes to reduce the likelihood of head punctures and loss of product, and thermal protection to allow time to evacuate areas around accident sites before tanks violently rupture when those tank cars are involved in fires;
- improved inspection and repair requirements for highway cargo tanks; and
- improved requirements for communicating information about the hazards posed by cargoes transported, including better shipping descriptions, 24-hour telephone numbers for contacting shippers, initial information about potential hazards, public safety, and emergency response actions.

I would like to discuss, however, four areas where the Board believes that additional action should be taken to enhance the safe transportation of hazardous materials. Those areas include: testing requirements for tank cars to identify structural defects before sudden and complete failure; rollover protection requirements for highway cargo tanks; crashworthiness of front heads on cargo tanks used to transport liquefied flammable gases and potentially lethal nonflammable gases; and prac-

tices, procedures, and training to identify undeclared hazardous materials shipments.

On January 18, 1992, in Dragon, Mississippi, a railroad tank car carrying more than 30,000 gallons of liquefied propane literally pulled apart as a train began to move from a siding onto a main track. All 30,000 gallons of propane were instantaneously released. Following ignition of propane gases, the entire area was engulfed in fire. The Safety Board's investigation found that a crack that had initiated on the inside of the tank had grown to 21 inches long before the tank catastrophically failed. Post-accident inspection and testing of 108 tank cars of the same design disclosed that 40 of these tank cars had cracks in the same location.

A second accident occurred on March 25, 1992, in Kettle Falls, Washington, involving a railroad tank car carrying 13,000 gallons of sulfuric acid. The tank car cracked at the bottom center of the tank along a circumferential weld, resulting in the release of all the sulfuric acid. There was metallurgical evidence of a preexisting crack in the area of the failure. The tank car had just passed visual inspections and a hydrostatic test the previous month, and it was carrying its first load of cargo since the inspection and test. The tank car failed as the train began to move forward.

Because of these structural tank car failures, the Safety Board initiated a special investigation on the inspection and testing of railroad tank cars. The Board concluded that hydrostatic tests and visual inspections of tank cars at arbitrary intervals were not effective in detecting structural defects in welded tank car tanks or in detecting defects at high stress areas where stubs, ribs or other attachments are attached to tanks before sudden and complete failure.

The Board found that the use of acoustic emission, ultrasonic, and other non-destructive testing methods, if applied at appropriate intervals based on damage-tolerance concepts, could detect existing cracks prior to catastrophic failure of rail tank cars. However, additional research was needed to determine the most effective to be used under given conditions and the appropriate inspection intervals. The Safety Board recommended that the Federal Railroad Administration (FRA), the Research and Special Programs Administration (RSPA), the Association of American Railroads (AAR), the Railway Progress Institute and the Chemical Institute work together to evaluate non-destructive techniques and determine how such techniques can best be applied for periodic testing and inspection of all tank cars that transport hazardous materials, and that the FRA and RSPA initiate research requirements for the periodic inspection and testing of tank cars that may require the detection of cracks before they propagate to critical length.

We are pleased that the FRA, RSPA and the industry have agreed with recommendations to evaluate when a routine inspection and test techniques for tank cars and are initiating several research projects. In September 2, 1992, the RSPA and FRA published two final rules that will improve the reliability of detecting cracks, pin corrosion, and lining failure in tank cars by the use of non-destructive tests, and to establish more basic car inspection intervals required through damage tolerance analysis. Full implementation of a damage tolerance program will take several years. The Board has asked the FRA for periodic updates on the progress in implementing the recommendations. Safety recommendations E-92-22 remain "Open—deferred action."

Between January and May 1991, the Safety Board investigated 7 highway accidents in which DOT specification MC 306 or MC 312 cargo tanks overturned and hazardous materials were released through damaged casings or failure of any of the tanks. The highway cargo tanks were equipped with rollover protection devices. However, the failure of the device or primary structure rollover protection tank concerns about their performance and the adequacy of DOT requirements regarding the structural integrity and configuration of the rollover protection device.

As a result of the special investigation, we have made rollover protection. The Safety Board issued recommendations on cargo tank rollover protection requirements. In March 20, 1992, the Safety Board recommended that the Federal Highway Administration (FHWA), with the assistance of RSPA, improve the performance of rollover protection devices on tank trucks cargo tanks by conducting and analyzing the tests that can not replicate severe rollover and rollover accidents, and later promulgating performance standards for rollover protection devices that are based on the engineering modeling and analysis.

In the most recent response to the recommendations, on April 10, 1992, the FHWA advised that it was evaluating cargo tank crash, rollover accidents for use of computer-based techniques and other criteria analysis of rollover accidents. It was also to coordinate the computer modeling with the work on accident simulation. The Safety Board is continuing to monitor progress on this work and has asked FHWA for additional information about this work.

The Safety Board is also concerned about the crashworthiness of front heads on cargo tanks used to transport liquefied flammable gases and potentially lethal non-flammable compressed gases. On July 27, 1994, in White Plains, New York, a tractor cargo-tank semitrailer loaded with 9,200 gallons of propane hit a bridge column, fracturing the front head and releasing propane. When ignited, a fireball rose 200 to 300 feet in the air. The tank was propelled northward about 300 feet and landed on a frame house, engulfing it in flames. The driver was killed and 23 people were injured.

Following a derailment in Crestview, Florida in 1979 that resulted in the failure of several rail tank cars carrying liquefied compressed gases, the Safety Board issued an intermodal safety recommendation to RSPA asking that it expand its research into new approaches for controlling pressurized liquefied flammable gas releases from breached tanks. (I-79-12) In 1991, 12 years after issuance of our safety recommendation, RSPA advised the Safety Board that the research program had been canceled, but that research had not yielded any viable alternatives to railroad shelf-couplers, headshields, and thermal protection, all which had proven effective in preventing product release. The Safety Board agreed that rail tank car improvements had reduced the number of catastrophic failures of pressurized tank cars, but reminded RSPA that the safety recommendation was intermodal and that RSPA had not addressed this problem as it related to highway cargo tanks.

To further support research, the Safety Board advised RSPA about 4 highway accidents it had investigated involving the failure of cargo tanks carrying LPG. Those accidents occurred April 29, 1975, at Eagle Pass, Texas, resulting in 51 burn injuries and 16 fatalities; April 6, 1987, in Lawrenceville, New Jersey, resulting in 7 burn injuries; December 23, 1988, in Memphis, Tennessee, resulting in 23 burn injuries, 9 fatalities; and January 20, 1992, in Crawford, Mississippi, resulting in 4 burn injuries and 3 fatalities. RSPA did not respond, and on June 29, 1994, the Safety Recommendation I-79-12 was "Closed—Unacceptable Action."

Because of the severe accident in White Plains, New York, the Safety Board again called for action to improve the crashworthiness of cargo tanks. On November 27, 1995, the Safety Board asked FHWA to cooperate with RSPA in studying methods and developing standards to improve the crashworthiness of front heads on cargo tanks used to transport liquefied flammable gases and potentially lethal non-flammable compressed gases (H-95-35). In responding to the safety recommendation on April 10, 1996, the FHWA agreed with the Safety Board that the crashworthiness of the front end of cargo tanks used to transport these cargoes needed further evaluation. It stated that it would request funds for this project during fiscal year 1997. On June 24, 1996, Safety Recommendation H-95-35 was classified "Open—Acceptable Response."

Finally, ValuJet flight 592 crashed on May 11, 1996, shortly after takeoff from Miami International Airport, Florida. Both pilots, the three flight attendants, and all 105 passengers were killed. Before the accident, the flightcrew reported to air traffic that it was experiencing smoke in the cabin and cockpit.

Factual information provides that five cardboard boxes containing as many as 144 chemical oxygen generators, some with unexpended oxidizer cores, and three wheel/tire assemblies, had been loaded in the forward cargo compartment of flight 592 shortly before departure. These items were being shipped as company material (COMAT). Additionally, some passenger baggage and U.S. mail were loaded into the forward cargo compartment.

Shortly before the departure of flight 592, a driver from the SabreTech Inc., maintenance facility at the Miami airport delivered the COMAT (the boxes and wheel/tire assemblies) to the ValuJet lead ramp agent for transport to ValuJet facilities in Atlanta. (SabreTech operated an FAA-approved aircraft repair and maintenance facility at the Miami airport and had performed renovation work for ValuJet.) A SabreTech shipping ticket, dated May 10, 1996, for the five boxes of chemical oxygen generators, was also offered to the ramp agent. The generators were identified on the shipping ticket as "Oxy Canisters [sic] Empty."

The ramp agent, who was busy offloading the aircraft from its previous flight, signed the shipping ticket for the COMAT and instructed the SabreTech driver to place the items on an empty baggage cart. The ramp agent stated that he asked the first officer of flight 592 for approval to load the COMAT on the aircraft. After the ramp agent and the first officer estimated the weight of the COMAT, the baggage and mail were loaded into the cargo compartment, and then the three wheel/tire assemblies were loaded, followed by the five boxes with the generators. The boxes with the generators were loaded on top of or immediately adjacent to the wheel/tire assemblies.

Chemical oxygen generators, when transported as cargo, are considered a hazardous material regulated under the Department of Transportation hazardous mate-

rials regulations (49 CFR Parts 171-180) and are classified as oxidizers. These same regulations govern the packaging, labeling, and shipping requirements for transportation of chemical oxygen generators.

Although the origin of the in-flight fire on board flight 592 has not yet been determined, the presence of the chemical oxygen generators in the forward cargo compartment of the aircraft created an extremely dangerous condition. The chemical decomposition reaction of an oxidizer such as sodium chlorate in a confined space will generate heat, and the oxygen resulting from the reaction will sustain and intensify a fire. Also, the ignition temperature of ordinary materials is lowered in an oxygen-rich environment.

The failure to properly identify and properly package hazardous materials had resulted in other accidents and incidents.

For example, on November 3, 1973, a Pan American World Airways, Inc., Boeing 707-321C crashed at Logan International Airport, Boston, Massachusetts, killing all three crewmembers. Thirty minutes after this cargo flight departed John F. Kennedy Airport, New York, the flightcrew reported smoke in the cockpit, and the flight was diverted to Logan, where it crashed short of the runway. The Safety Board determined that dense smoke in the cockpit seriously impaired the flightcrew's vision and ability to function effectively during the emergency. Although the source of the smoke could not be established conclusively, the Board believed that spontaneous chemical reaction between leaking nitric acid (a corrosive and oxidizing material), which was improperly packaged and stowed, and the improper sawdust packing surrounding the acid's package, initiated the accident sequence. A contributing factor was found to be a general lack of compliance with existing regulations governing the transportation of hazardous materials and the inadequacy of government surveillance. Further, the Safety Board concluded that most personnel handling the hazardous material shipment were inadequately trained.

On August 10, 1966, a McDonnell Douglas DC-10-40, operating as a non-scheduled flight from Honolulu, Hawaii, to Chicago, Illinois, with an en route stop in Los Angeles, California, arrived without incident at Chicago's O'Hare International Airport. After the passengers and crew had deplaned, a fire, which was found to have initiated in a cargo compartment, burned through the cabin floor, spread rapidly throughout the entire cabin, and destroyed the airplane.

The Safety Board concluded that the fire had been initiated as a result of a mechanic's improper handling of a chemical oxygen generator associated with a seatback temporarily stored in the compartment. The Safety Board learned as a consequence of this incident that some air carriers were not aware that solid-state passenger supplemental oxygen generators were capable of generating high temperatures and were classified as hazardous materials when carried as company material in cargo compartments. Consequently, some air carriers were not taking the required precautions when shipping oxygen generators in their airplanes. Following this incident, the FAA promptly notified all domestic air carriers and foreign airworthiness authorities of the circumstances of the incident and reminded them that oxygen generators are oxidizers and therefore are classified as hazardous materials, which should be packaged and stowed securely.

On February 3, 1968, American Airlines flight 132, a DC-9-83, had an in-flight fire while en route to Nashville Metropolitan Airport, Tennessee, from Dallas/Fort Worth International Airport, Texas. As the aircraft was on a final instrument landing system approach, a flight attendant and a deadheading first officer notified the cockpit crew of smoke in the passenger cabin. The Safety Board found that hydrogen peroxide solution (an oxidizer) and a sodium orthosilicate-based mixture had been shipped and loaded into the mid cargo compartment of the airplane. The shipment was improperly packaged, and it was not identified as a hazardous material. After the hydrogen peroxide leaked from its container, a fire started in the cargo compartment. The fire eventually breached the cargo compartment, and the passenger cabin floor over the midcargo compartment became hot and soft. Fortunately, the aircraft landed without further incident, and the 120 passengers and six crewmembers safely evacuated the aircraft.

As a result of the accident on American Airlines flight 132, the Safety Board stated that in addition to proper packaging of hazardous materials, the safe transportation of hazardous materials depends on sufficient information to identify the materials and the hazards presented during transportation. Accordingly, the Board noted that both shippers and carriers had a responsibility to determine if materials offered for transportation were hazardous and in proper condition to ensure their safe transportation.

The Safety Board stressed in its report of the American Airlines incident the importance for air carriers to have effective policies, practices, and training to screen passenger baggage and freight shipments for undeclared or unauthorized hazardous

materials that are offered for transport. However, acceptance of undeclared and unauthorized shipments of hazardous materials continues to pose a significant threat to passenger and cargo aircraft. Consequently, the Safety Board believes that the FAA should evaluate the practices of all air carriers, including training, for accepting passenger baggage and freight shipments (including company material) and for identifying undeclared or unauthorized shipments of hazardous materials, and then require all air carriers to revise their procedures as necessary.

The Safety Board has yet to complete action on the ValuJet accident that occurred near Miami. However, as a result of our investigation, the Safety Board issued a safety recommendation letter to the Federal Aviation Administration (FAA) that called for urgent actions to prevent similar accidents in the future. Those recommendations state:

Immediately evaluate the practices of and training provided by all air carriers for accepting passenger baggage and freight shipments (including company materials) and for identifying undeclared or unauthorized hazardous materials that are offered for transport. This evaluation should apply to any person, including ramp personnel, who accepts baggage or cargo for transport on passenger and cargo aircraft. (A-96-25)

Require air carriers, based on the evaluation performed under Safety Recommendation A-96-25, to revise their practices and training for accepting passenger baggage and freight shipments and for identifying undeclared or unauthorized hazardous materials that are offered for transport. (A-96-26)

In a response dated July 16, 1996, the FAA agreed with the recommendations and stated that it had initiated an immediate evaluation of air carrier hazardous materials manuals and training programs to determine if methods are included to identify undeclared or unauthorized hazardous materials. On March 24, 1997, the FAA provided an update on its response to these recommendations. It noted that the FAA had completed its first phase of its evaluation and had reviewed 215 air carriers certified under 14 CFR Parts 121, 125, and 135. During the evaluation, the FAA said it reviewed FAA-approved air carrier manuals to ascertain what information is currently provided to prompt air carrier employees to recognize suspicious cargo or baggage and to ask additional questions before rejecting or accepting that cargo or baggage. The FAA said that it had initiated phase 2 of the evaluation which consists of followup field G5 inspections of those carriers to verify that the air carriers which have procedures in their manual are following those procedures. Based on the outcome of phase 2, the FAA noted that it would have all the necessary information to recommend appropriate actions to correct any noted deficiencies and to address the issues outlined in the safety recommendations.

The Safety Board is concerned, based on the facts developed during the ValuJet flight 592 accident investigation, that the practices, procedures, and training of the personnel involved in the identification and handling of hazardous materials remain inadequate.

Even more so, Madame Chairwoman, we are concerned that, although the FAA has banned oxygen generators from passenger airliners and has proposed a ban on other oxidizers, no action has yet been taken on recommendations we issued nine years ago to install smoke detectors and fire suppression equipment in cargo compartments that do not currently have them.

Those recommendations, issued after the Nashville accident, were closed by the Board and classified "Unacceptable Action." Last November, the airline industry announced it would voluntarily retrofit existing Class D compartments with smoke detectors. We are watching carefully to see if this retrofitting will take place in a timely fashion.

The fact still remains, Madame Chairwoman, that pilots taking off today in aircraft having Class D cargo compartments have no more ability to be alerted of the existence of a fire in that compartment, much less the ability to suppress it, than did the crew of ValuJet flight 592, or indeed, the crew of the American Airlines airplane in 1988.

Madam Chairwoman, that completes my statement, and I will be pleased to respond to any questions you or the Committee may have.

Senator WYDEN. Thank you.

As you can tell, we are especially hectic this morning. Senator Burns has been kind enough to come and relieve me for a stint, because I have to head for the floor as well. So there is a bipartisan effort here to try to be sensitive to these important hazardous materials. And we appreciate your bearing with us.

Senator Burns, we would now move to Ms. Charlotte Lane as our next witness, the Chair of the Public Service Commission of West Virginia, Charleston, WV.

Ms. Lane, please excuse my bad manners. I, like our chair, Senator Hutchison, will also be following up. And my apologies for the hectic nature of the morning.

**STATEMENT OF CHARLOTTE R. LANE, CHAIRMAN, PUBLIC
SERVICE COMMISSION OF WEST VIRGINIA**

Ms. LANE. Good morning, Senators. Thank you for this opportunity to appear before you today.

My name is Charlotte R. Lane, and I am the newly appointed chairman of the West Virginia Public Service Commission. This is my 7th day on the job, and I am happy to come to Washington to talk to you about this important program for the State of West Virginia and all of the States in this country.

Senator HUTCHISON. They are certainly breaking you in fast. [Laughter.]

Ms. LANE. Yes.

I am here today on behalf of the West Virginia Commission and the State of West Virginia, because we are one of four States administering a uniform hazardous materials registration and permitting program. That program is the embodiment of a compromise between the States and industry, and was mandated by Congress in the Hazardous Materials Transportation Uniform Safety Act of 1990.

The West Virginia Public Service Commission has historically exercised its safety jurisdiction in cooperation with respective Federal agencies in the areas of railroads, gas pipelines and motor carriers. Our State's geographic location, its highways in terms of topographical diversity, and its concentration of extrication chemical and related industries all combine to intensify our concern with safe and efficient transportation, especially in the hazmat arena.

In 1990, Congress recognized in HMTUSA the need for uniformity among the States in registered and permitting carriers and shippers of hazardous materials. It directed the U.S. Secretary of Transportation to form a working group of State and local officials who, in consultation with the industry, would develop the procedures from which a national program would be modelled.

In 1992, the National Governors' Association and the National Council of State Legislators, acting on behalf of the Secretary, convened the working group which became the Alliance for Uniform Hazmat Transportation Procedures. The Alliance consisted of 30 governmental officials, representing 22 States who, after substantial input by affected industry and citizen groups, submitted recommendations to the Secretary.

Importantly, the recommendations represented a consensus of the hazmat industry and State and local governments, and was the product of nearly 2 years of meetings and negotiations. Based on the Alliance recommendations, a 2-year pilot program was chosen as the vehicle by which four States would test the recommended procedures. I am pleased to say that West Virginia was among these pilot States, along with Ohio, Minnesota, and Nevada.

In our State as well as the others, it was first necessary to seek legislation to implement the pilot program. I think that the valuable assistance of the West Virginia Motor Truck Association in our effort to obtain the necessary legislation speaks volumes in terms of the support among the private sector for the uniform program. As you may know, the West Virginia Motor Truck Association is an affiliate of the American Trucking Association, from whom you will be hearing today.

Between 1993 and 1995, the pilot States implemented a uniform, base State program under which hazmat transporters and shippers could register and obtain the necessary credentials using the same forms and procedures in each State. These industry members also benefited from the reciprocity extended between the participating States.

Concurrently, this registration and permitting process allowed us to examine carriers' histories of vehicle safety and financial responsibility. Our staff was able to reach out to many in the hazmat transportation sector who were partially and even totally unaware of applicable Federal safety regulations.

On the basis of pilot State experience, the Alliance submitted to the Secretary of Transportation a final report, augmenting its original recommendations, and detailing a comprehensive plan for national implementation of a uniform hazardous materials transportation program. This was the process specifically set forth by Congress in Section 22 of HMTUSA.

On July 9, 1996, the Federal Highway Administration commenced the rulemaking, requesting comment on the final report of the Alliance. Obviously, the States and industry's hard work had paid off. Favorable comments were received from an impressive array of supporters from both public and private sectors. I have included a list of those commenting in favor of the uniform program in my written testimony to the committee.

Unfortunately, as of today, I am unable to report to the committee any further progress in this effort to implement uniform and reciprocal base State requirements for hazardous materials transporters and shippers. Essentially, since requesting comments on the recommended program and receiving substantial support for it, the Federal Highway Administration Office of Motor Carriers has declined to move forward on this important initiative.

States and industry have made repeated overtures to advance the rulemaking. In fact, members of my staff have participated in numerous meetings and discussions with ranking OMC officials and industry members who urge agency action. To date, our concerns have fallen on deaf ears.

Soon it will be a year since the Alliance recommendations were submitted for public comment. It has become clear that OMC will not proceed with implementation of the uniform program as mandated in HMTUSA. Instead, the legislation under your consideration proposes a new Federal registration and permitting system for the hazardous materials transporting and shipping industry.

Meanwhile, West Virginia and the other participating States are continuing the uniform program. But this relatively small program is in danger of dying on the vine. Without Federal support, and es-

pecially if a new Federal system is implemented, national expansion of the uniform program is seriously jeopardized.

In fact, it is likely that the program in West Virginia, as well as in the other participating States, will become the exception rather than the rule envisioned by Congress. Thus, this established program even stands to lose necessary local support for its continuance.

I am here today to ask this committee to preserve and expand the excellent progress already made by the States and industry to craft a hazmat program we can all live with. I am here seeking your acknowledgement of the unique and creative efforts by States and industry to achieve consensus and compromise on national uniformity in hazardous materials transportation.

I am here asking you to reaffirm support for the national base State system, designed by those most affected by its impact, which was written into law by Congress in 1990. The efforts and successes of the real stakeholders in hazmat safety should not be ignored or replaced by a new wheel, reinvented in Congress at OMC.

Most importantly, your acknowledgement of our unprecedented consensus—consensus which provides a significant level of comfort for States and significant procedural protection for the industry—will serve as a green light to other States anxious to join the uniform program. Many of those States are at this very moment sitting on the sidelines, monitoring this legislation, and exploring their alternatives.

So I urge your consideration of the concerns that will be expressed to you today on behalf of the States and industry, and I thank you very much for the opportunity to bring to you some of the concerns from our perspective in West Virginia.

Thank you.

[The prepared statement of Ms. Lane follows:]

PREPARED STATEMENT OF CHARLOTTE R. LANE, CHAIRMAN, PUBLIC SERVICE
COMMISSION OF WEST VIRGINIA

Good morning. My name is Charlotte Lane and I am Chairman of the West Virginia Public Service Commission. I am here today on behalf of the Commission and West Virginia which is one of four states administering a uniform hazardous materials registration and permitting program. That program is the embodiment of a compromise between the states and industry, and was mandated by Congress in the Hazardous Materials Transportation Uniform Safety Act in 1990 (HMTUSA—Pub. L. No. 101-615).

The West Virginia Public Service Commission has historically exercised its safety jurisdiction in cooperation with respective Federal agencies in the areas of railroads, gas pipelines and motor carriers. Our state's geographic location, its highways in terms of topographical diversity, and its concentration of extraction, chemical and related industries all combine to intensify our concern with safe and efficient transportation, especially in the hazmat arena.

In 1990 Congress recognized in HMTUSA the need for uniformity among the states in registering and permitting carriers and shippers of hazardous materials. It directed the U.S. Secretary of Transportation to form a working group of State and local officials who, in consultation with industry, would develop the procedures from which a national program would be modeled.

In 1992 the National Governors' Association and the National Conference of State Legislators, acting on behalf of the Secretary, convened the working group which became the Alliance for Uniform Hazmat Transportation Procedures (the Alliance). The Alliance consisted of 30 governmental officials representing 22 states who, after substantial input by affected industry and citizen groups, submitted recommendations to the Secretary. Importantly, the recommendations represented a *consensus*

of the hazmat industry and State and local governments and was the product of nearly 2 years of meetings and negotiations.

Based on the Alliance recommendations a 2-year pilot program was chosen as the vehicle by which four states would test the recommended procedures. I am pleased to say that West Virginia was among these pilot states, along with Ohio, Minnesota and Nevada.

In our State as well as the others it was first necessary to seek legislation to implement the pilot program. I think that the valuable assistance of the West Virginia Motor Truck Association in our effort to obtain the necessary legislation speaks volumes in terms of the support among the private sector for the uniform program. As you may know, the West Virginia Motor Truck Association is an affiliate of the American Trucking Association from whom you will also be hearing today.

Between 1993 and 1995 the pilot states implemented a uniform, base State program under which hazmat transporters and shippers could register and obtain the necessary credentials using the same forms and procedures in each state. These industry members also benefited from the reciprocity extended between the participating states. Concurrently this registration and permitting process allowed us to examine carriers' histories of vehicle safety and financial responsibility. Our staff was able to reach out to many in the hazmat transportation sector who were partially and even totally unaware of applicable Federal safety regulations.

On the basis of pilot State experience the Alliance submitted to the Secretary of Transportation a final report augmenting its original recommendations and detailing a comprehensive plan for national implementation of a uniform hazardous materials transportation program. This was the process specifically set forth by Congress in Section 22 of HMTUSA.

On July 9, 1996, the Federal Highway Administration (FHWA) commenced a rule-making (Docket No. MC-98-10) requesting comment on the final report of the Alliance. Obviously the states' and industry's hard work had paid off. Favorable comments were received from an impressive array of supporters from both public and private sectors. I have included a list of those commenting in favor of the uniform program in my written testimony to the Committee.¹

Unfortunately, as of today I am unable to report to the Committee any further progress in this effort to implement uniform and reciprocal base State requirements for hazardous materials transporters and shippers. Essentially, since requesting comments on the recommended program, and receiving substantial support for it, the FHWA Office of Motor Carriers (OMC) has declined to move forward on this important initiative. States and industry have made repeated overtures to advance the rulemaking. In fact, members of my staff have participated in numerous meetings and discussions with ranking OMC officials and industry members to urge agency action. To date our concerns have fallen on deaf ears.

Soon it will be a year since the Alliance recommendations were submitted for public comment, and it has become clear that OMC will not proceed with implementation of the uniform program as mandated in HMTUSA. Instead, the legislation under your consideration proposes a new *Federal* registration and permitting system for the hazardous materials transporting and shipping industry.

Meanwhile, West Virginia and the other participating states are continuing the uniform program. But this relatively small program is in danger of dying on the vine. Without Federal support (and especially if a new Federal system is implemented) national expansion of the uniform program is seriously jeopardized. In fact it is likely that the program in West Virginia—as well as in the other participating states—will become the exception rather than the rule envisioned by Congress. Thus, this established program even stands to lose necessary *local* support for its continuance.

I am here today to ask the Committee to preserve and expand the excellent progress already made by the states and industry to craft a hazmat program we can all live with. I am here seeking your acknowledgment of the unique and creative effort by states and industry to achieve consensus and compromise on national uniformity in hazardous materials transportation. I am here asking you to reaffirm support for the national base State system, designed by those most affected by its impact, which was written into law by Congress in 1990.

¹ Favorable comments were received by FHWA in Docket No. MC-98-10 from Commercial Vehicle Safety Alliance; American Trucking Association; Association of Waste Hazardous Materials Transporters; National Tank Truck Carriers; National Private Truck Council; Hazardous Materials Advisory Council; Ohio Trucking Association; Minnesota Trucking Association; Nevada Transport Association; West Virginia Motor Truck Association; Ohio Public Utilities Commission; and the Alliance for Uniform Hazmat Transportation Procedures.

The efforts and successes of the real stakeholders in hazmat safety should not be ignored or replaced by a new "wheel" reinvented in Washington at OMC.

Most importantly your acknowledgment of our unprecedented consensus—consensus which provides a significant level of comfort for the states and significant procedural protection for the industry—will serve as a green light to other states anxious to join the uniform program. Many of those states are at this very moment sitting on the sidelines monitoring this legislation and exploring their alternatives.

So I urge your consideration of the concerns that will be expressed to you today on behalf of the states and industry, and I thank you very much for this opportunity to bring to you some of those concerns from our perspective in West Virginia.

Senator BURNS [presiding]. Cynthia Hilton, executive director, Association of Hazardous Waste Material Transporters, thank you for coming this morning. And if you could shorten up your testimony. We have got an 11:30 vote, and we want to get your testimony into the record. And if you want to capsulize it, that is fine. And if you do not want to, that is fine, too.

Thank you very much for coming this morning.

STATEMENT OF CYNTHIA HILTON, EXECUTIVE DIRECTOR, ASSOCIATION OF WASTE HAZARDOUS MATERIALS TRANSPORTERS

Ms. HILTON. I am happy to be here, Senator Burns, Senator Hutchison. I will try to be as brief as possible. Some of my friends in the audience know that that is somewhat difficult, but I will stick to my time limit.

I am the executive director of the Association of Waste Hazardous Material Transporters. The AWHMT is an affiliate of the American Trucking Association, and my statement will represent the views of both associations.

Many agreements were made to bring competing interests together in support of the 1990 amendments to the Hazardous Materials Transportation Act. Some industry supported it. Others were not in our interest. In the end, the regulatory framework set up by the Act held the promise to resolve many concerns of industry, government and emergency responders. Our goal during this reauthorization is to ensure that there is no retreat from and that Congress reaffirm the commitment to the principles established in 1990.

While my written statement addresses DOT's specific proposals, in the time allotted, I intend to focus on four issues of major concern to our industry.

First, DOT's preeminent authority to regulate the transport of hazardous materials needs to be clarified.

Recent events have blurred the lines of which governmental entity has preeminent jurisdiction to regulate hazmat transportation. Once again, we are at risk of allowing a regulatory environment that will confound shippers and carriers which attempt to comply with multiple and conflicting requirements. We believe, as did the 101st Congress, that unreasonable hazards and burdens on commerce, without mitigating safety or security benefits, will be a consequence.

We strongly urge Congress to clarify DOT's jurisdiction, to ensure safe, secure, and efficient transportation of hazardous materials.

Second, the historic use of the so-called obstacle preemption test needs to be reaffirmed. DOT has consistently interpreted the HMTA to require substantial regulatory uniformity as the means

to the statute's goals of safety and efficiency. To achieve this degree of uniformity, provision for Federal preemption has existed since the HMTA was enacted.

DOT implemented its original preemptive authority through criteria set forth by the Supreme Court. The Court held that a State law is preempted if it stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.

In 1990, Congress ratified DOT's interpretation when it codified the obstacle test. All courts, save one, have upheld DOT's consistent interpretation of its obstacle test preemption authority.

Notwithstanding congressional, judicial and administrative precedent, last year, the D.C. Circuit Court of Appeals overturned a DOT preemption determination because it was based on purposes of the Act. The precedential effect of the D.C. Circuit's decision, which is binding in a jurisdiction where the government can always be sued, threatens to reverse decades of administrative practice, and undermine the vitally important and heretofore undisputed power of DOT to promote safety and efficiency in hazmat transportation. It is essential that Congress reaffirm DOT's authority to preempt non-Federal requirements that are determined to be an obstacle to accomplishing the purposes of the HMTA.

Third, our testimony contains a number of recommendations to improve hazmat registration programs and permitting at the Federal level. But I would like to follow Ms. Lane's comments and speak to these issues at the State level.

I have with me binders containing the forms to apply for various State hazmat permits. This was the visual aid that we used in 1990 to help Congress understand the burden that this regulation had become. While each of these forms asks for the name, the address, the phone number, the contact and other similar data of the applicant, none of these programs were reciprocal.

The 101st Congress heard our concern, and you have heard Ms. Lane describe the evolution of the State-based recommendations to rationalize this process. The program that resulted replaced these forms with this one form.

The participating States have seen the benefits of a program that rewards safety, spreads the workload among States, eliminates gaps that existed in some State programs, and is a safe harbor from preemptive challenge. Industry has benefited by reduced paperwork, a fee formula that comports with Federal law and the Constitution, and a level playing field, as all carriers are held to the same standard, no matter what jurisdiction issues the credential.

We are, however, at a crossroads. None of this will be realized unless the program expands. This task was delegated to the Office of Motor Carriers. Regrettably, OMC has not moved the initiative forward. In the meantime, the number of permit programs imposed on the industry has increased, and without your reaffirmation of the merits of uniform, reciprocal State-based registration and permitting, this program will die.

The affected motor carrier industry and the participating States support amendments to eliminate the need to implement this program through a Federal rule. These amendments contemplate that the program will be implemented as other State-administered base

State agreements. Due process protections and procedures for Federal oversight are included. Such oversight should be a responsibility of RSPA, but not OMC, because RSPA has the expertise to determine whether or not a change to the program is consistent with the purposes of the HMTA, and also because non-Federal entities that deviate from the program are subject to Federal preemption.

Fourth, it would be wholly hypocritical if we did not direct attention to the staffing and resource needs of the Office of Hazardous Materials Safety. We have asked that nothing be taken off OHMS' plate and that more responsibility be put on it. We have recommended this, because the Office has proven, over time, to be approachable, determined to give a fair hearing to all, and to be capable of making a decision, even if it is a decision that we do not support. We know that they will make the most of any resources given.

We hope that this committee will ensure that OHMS has the leadership, staff and resources sufficient to carry out its many responsibilities.

On behalf of the ATA and the AWHMT, I appreciate your attention to these recommendations and concerns, and I would be happy to respond to questions.

Senator BURNS. Thank you very much, Ms. Hilton. I appreciate that.

Cliff HARVISON. Gosh, where I come from, we have got Halversons, Holversons, now we have got a Harvison. [Laughter.] [The prepared statement of Ms. Hilton follows.]

PREPARED STATEMENT OF CYNTHIA HILTON, EXECUTIVE DIRECTOR, ASSOCIATION OF WASTE HAZARDOUS MATERIALS TRANSPORTERS

- Agreements were made when the 101st Congress enacted the 1989 amendments to the HMTA. We want the 105th Congress to reaffirm those agreements.

- The Department of Transportation proposals do not address industry's major concerns. We address four of these major issues.

- Issue 1: The scope of DOT's preeminent authority to regulate the transport of hazardous materials needs to be clarified.

§5101 should explicitly provide that the purpose of the HMTA is to ensure the safe, secure and efficient transportation of hazardous materials, and reaffirm that DOT has been provided preemption authority in order to achieve uniform regulation of hazardous material transportation, to eliminate inconsistent rules that apply differently from Federal rules, to ensure efficient movement of hazardous materials in commerce, and to promote the national health, welfare, and safety. DOT's repeal of §5106 is premature and §5107 must be further amended to strike an unintended delegation of shared responsibility with OSHA.

- Issue 2: The historic use of the so-called "obstacle" preemption test needs to be reaffirmed.

§5125 should be amended to provide that DOT has authority to preempt non-federal requirements that are determined to be an obstacle to accomplishing and carrying out the purposes of the HMTA.

- Issue 3: Legislative authorities for hazardous materials registration and permitting programs at the Federal and State level needs to be revised and coordinated.

FEDERAL HAZMAT REGISTRATION AND EMERGENCY RESPONSE PLANNING THE TRAINING GRANTS

The registration program fee should be kept low and flat and that the appropriate source of additional funds be obtained by expanding the base of payers to those transporting or shipping placarded loads. This change also has the benefit of identifying for RSPA who is its subject regulated community of concern.

The Grants programs should be reformed to (1) eliminate the match and maintenance of effort requirements; (2) require states applying for grants disclose information about fees they assess; (3) reduce the amount of any grants by the amount of

the fee collected or a portion thereof and require that no grant be awarded a State that fails to certify that it is in compliance with 49 U.S.C. 5125(g); (4) to reduce the excessive administrative charge and use the difference transferred to fund State efforts to enforce compliance; (5) cap the fund at \$18 million; and (6) report to Congress on how the array of Federal grant programs for hazardous materials preparedness, prevention, response, and compliance assistance and enforcement can be most effectively and efficiently administered.

FEDERAL MOTOR CARRIER PERMITTING

The relationship between § 5109 and § 5119 should be clarified to provide that the Federal permit is controlling but that possessors of the § 5119 permit will except the motor carrier from the requirement to obtain a Federal permit. Further, to better coordinate the applicability of both the § 5109 and § 5119 permits, all motor carriers transporting hazardous material requiring a placard should be subject to the § 5109 permit provision.

STATE-BASED REGISTRATION AND PERMITTING OF MOTOR CARRIERS TRANSPORTING HAZARDOUS MATERIALS

§ 5119 should be implemented as other State administered base-state agreements. Only substantive changes should be Federal oversight. Such oversight should be a responsibility of RSPA not FHWA because RSPA has expertise in determining whether or not the change contemplated is consistent with the purposes of the HMTA and also because non-federal entities that deviate from the program are subject to Federal preemption. The section should also clarify that authority to register and permit motor carriers is a function of states or Indian tribes not a local prerogative.

- Issue 4: Congress needs to provide the staffing and resources necessary for DOT to carry out effectively and efficiently its hazardous materials responsibility.
- While Administration proposals do not address industry's major concerns, we are prepared to respond to questions about these proposals.
- We are prepared to submit to you legislative text to accomplish each recommendation we have made.

STATEMENT OF CLIFFORD J. HARVISON, PRESIDENT, NATIONAL TANK TRUCK CARRIERS, INC.

Mr. HARVISON. Pick one of four or five, Mr. Chairman. It is fine with me.

Senator BURNS. OK.

Mr. HARVISON. Mr. Chairman, I noted your admonition to the panel members, and I will be happy to comply.

My name is Cliff Harvison. I am president of the National Tank Truck Carriers. I am currently in my 32nd year representing the Association.

The National Tank Truck Carriers is composed exclusively of tank truck companies. We represent about 250 of those entities. They operate 38,000 to 40,000 cargo tank motor vehicles. About 80 percent of the materials that we transport are hazardous materials. Therefore, our interest in this legislation is obvious and rather substantial.

We believe that HMTUSA, is beneficial to the public, to shippers, to carriers, as well as the emergency response community. We support the concept of regulatory uniformity that was outlined as a congressional mandate in that particular piece of legislation. We share, very frankly, with Ms. Lane and Ms. Hilton, the situation regarding the Alliance. We believe it is a good thing. We believe that, overall, it will be a positive benefit on the tank truck industry, as well as the entire hazmat community as a whole.

There are, however, a couple of areas upon which I would like to use the remainder of my time upon which to elaborate. Within

the context of permitting, which is one of the elements that was raised in HMTUSA's version of 1990 for the first time, we have two concerns.

First of all, we believe that a Federal permit—namely, that issued by the Department of Transportation—should be necessary only in those cases where a trucking company's State of domicile has no permitting program. We also believe that no tank truck carrier or any other carrier should be put out of business nationwide just because a single State withdraws the carrier's permit. Such a Draconian action should be taken only after a comprehensive review by the U.S. Department of Transportation.

Mr. Chairman, this is an area where we do disagree with the Alliance. However, I do want to stress for the committee's record that I am confident that these are basically procedural aspects that we can work out within the Alliance. And, again, I am confident of that.

Last, Mr. Chairman, NTTC believes that HMTUSA should be amended by inclusion of a statutory definition for the term "shipper" or "offeror." One of the purposes of HMTUSA's definition section is to ascribe a specific regulatory and compliance responsibility to equally specific persons or classes of persons. The word "shipper," or analogous words or phrases, is used throughout both the statute as well as in regulation. Yet nowhere is that term defined.

Today, like virtually every other element of our economy, the transportation community has become more complex. We believe that the ascription of specific responsibilities to shippers has become muddled over a period of time, and we think a statutory definition would be of great assistance in resolving that issue.

Mr. Chairman, with your acquiescence, if I could have my entire statement included in the record, that concludes my remarks. I, like the rest of the panel, will be happy to respond to any questions.

[The prepared statement of Mr. Harvison follows:]

PREPARED STATEMENT OF CLIFFORD HARVISON, PRESIDENT, NATIONAL TANK TRUCK CARRIERS, INC.

Madam Chairman and members of the Committee, thank you for accepting the comments of National Tank Truck Carriers, Inc. (NTTC) this morning. My name is Clifford Harvison and I am currently in my 32nd year representing the collective interests of the tank truck industry before the Congress, State governments and Federal and State agencies.

Founded in 1948, NTTC is a trade association, affiliated with the American Trucking Associations, composed of over 250 trucking companies, operating about 35,000 tank trucks, which specialize in the nationwide distribution of petroleum products, chemicals, dry flowables and a host of other commodities, including food-grade shipments. Conservatively, I estimate that over 80 percent of our loads are regulated (by U.S. DOT) as "hazardous materials" and/or "hazardous substances"; thus, our interest in this legislation is substantial.

Madam Chairman, almost eight years ago the Congress passed the Hazardous Materials Transportation Uniform Safety Act (HMTUSA) which both codified and clarified the roles of Federal and State governments in regulating "hazmat" transportation (particularly) in the highway mode. Properly, the Congress noted the overwhelming importance of "national . . . regulatory uniformity" in resolving the jurisdictional conflicts that inevitably arise when State and Federal officials differ over "who can regulate what . . ."

Frankly, my membership believes that HMTUSA is working and has had a beneficial impact on the public, carriers, shippers and the emergency response community. At the same time, NTTC believes that some refinements are in order, and I will use the remainder of my time, this morning, to elaborate on these issues.

First, the Congressionally-mandated objective of "regulatory uniformity" has been substantially undermined by a decision of the U.S. Court of Appeals for The District of Columbia. The net effect of that decision has been to restrict and circumscribe the ability of DOT to rule on whether or not a State or local regulation is an obstacle to accomplishing the will of this Congress.

Hopefully, this Committee will recommend adoption of reauthorization language which will reinstitute and reinforce DOT's full administrative preemptive authority.

Next, NTTC urges that some "closure" be brought to the concept of Federal and State "permitting" of motor carriers transporting hazardous materials. Current law instructs DOT to develop and promulgate a Federal permitting regime, yet DOT has taken no substantive action in instituting a "Federal" permit.

At the same time—and in the same law—the Congress authorized the National Governors Assn. and the National Council of State Legislators to develop uniform forms and procedures for State registration and permitting programs. In the "hazmat" community, this latter effort is referred to as "The Alliance", and NTTC has participated as a non-voting member in the Alliance deliberations.

NTTC believes that the Alliance program should be published by Federal DOT in a rulemaking action, and DOT's Office of Motor Carriers should act accordingly. Yes, we have our differences with elements of the Alliance program, but after seven years of meetings, proposals and counterproposals it's time for action. The Alliance has filed its recommendations with the Secretary, and the major parties have agreed that the basic structure of the program should replicate similar successful partnerships involving the trucking industry and State governments.

Within the context of "permitting", our membership has two prime concerns: (1) A Federal permit should be necessary only in those cases where a trucking company's state of domicile has no permitting program; and, (2) no carrier should be "put out of business, nationwide" just because a single State withdraws that carrier's permit. Such a draconian action should only be taken only after a safety review by the Federal DOT (under existing law).

Lastly, Madam Chairman, NTTC believes that HMTUSA should be amended by inclusion of a statutory definition for the term "shipper" (or "offerer"). One of the purposes of HMTUSA's definitions section is to ascribe specific regulatory and compliance responsibilities to equally specific persons (or classes of persons). The word "shipper" (or analogous words or phrases) appear throughout the statute and DOT's hazardous materials regulations, yet nowhere is that term defined.

Today, like virtually every other element of our economy, the transportation community has become more complex. What was (at one time) a relatively simple transaction, involving a shipper, a carrier and a receiver has become (today) a complex interaction involving third-party logistics personnel, forwarders, freight consolidators and other "specialists".

What has not changed is the fundamental requirement for specific persons to know and comply with important DOT regulations. We believe that by defining "shipper" all parties in a transportation transaction will be better aware of their responsibilities, and the DOT will be better able to direct their training and compliance efforts.

Madam Chairman, thank you (again) for the opportunity to testify this morning. I look forward to working with both the members and the Committee staff in this important legislative effort; and, I'll be pleased to respond to any questions.

Senator BURNS. I always feel guilty when we have a hearing like this. It is sort of hit and miss because it is a very, very important subject, especially in my State of Montana. But I want to just ask a couple of questions.

Ms. Hilton, you brought up a very interesting point. Has there been any kind of conversation with the States, or through the National Governor's Conference, for reciprocity? Maybe you and Mr. Harvison might address that, and I am saying sometimes these problems are a lot easier solved on the local level than they are here in this 13 square miles of logic free environment. [Laughter.]

Ms. HILTON. I am happy that you asked that question. This program was developed under the auspices of NGA. NGA administered the grant, if you will, to put together the States and local interests and industry to develop this uniform program. Maybe Ms. Lane could give the specifics on this, but I recall that something like 24

States were involved under the auspices of the NGA and the National Conference of State Legislatures to develop the principles that went into formulating this program. Once these recommendations were put forward and a report submitted to Congress in November 1993, four States agreed to test the recommendations. West Virginia was one of those, and it is that program that we are bringing to you today. States and industry have seen the benefits of permit uniformity and reciprocity, but we feel we are being frustrated by the Office of Motor Carriers reluctance to go forward with this program.

Senator BURNS. Ms. Lane, would you like to comment on what Ms. Hilton was talking about?

Ms. LANE. She is correct. Twenty-two States participated.

Senator BURNS. I just think it seems like we can work out some of our problems. I would hope so, anyway.

Ms. COYNER, February the 7th, several farm—and I came from a farm State, and I can remember back in 1990 or 1991, and I guess it was the 101st Congress and we were trying to define hazardous materials, and all at once soybean oil and safflower oil and all of those showed up on the hazmat, all of which adds a great deal of cost. I had to make a rather vivid analysis of what is a hazardous material and I took a little drink of soybean oil to show how hazardous it was, and it turned out to be hazardous. [Laughter.]

Anyway, we made our point and kept that off the list, by the way. But I will tell you one thing, you do not get an arm's length away from a bathroom for the next 2 days. [Laughter.]

Anyway, commodity and agribusiness groups submitted a petition for reconsideration on Docket HM-200, which was finalized on December 30, 1996. As I understand it, the petition requests a revision of the rule to provide an exception for hazardous material regulations for both farmers and retailers who transport agricultural products from retail to farm, between fields, and from farm back to the local source of supply, and also with the farm products moving off of the farm. Could you give this committee an update of the status of that petition?

Ms. COYNER. I would be glad to, Senator. Let me also note that in that rulemaking we spent a lot of time on these issues of particular sensitivity to the agricultural community, and there were some provisions that were designed to give what we thought was appropriate leeway to farmers to address both our safety concerns and the economic concerns that farmers had. We allowed intrastate farmers to move between fields, as long as they comply with State law, and also there are exceptions in the materials of trade requirements that affect not only farmers but others where they are transporting only very small quantities of hazardous materials.

I am aware of the petition that is pending before us on that issue, and I would like to ask Al Roberts to give us the particular status of that petition.

Mr. ROBERTS. The petition is currently under review in our office, Senator, and we will be making our recommendations shortly relative to that petition. We recognize we need to deal with it expeditiously, and we are attempting to do that.

I would only comment that one of the things that is of concern, and it was expressed in the preamble to the final rule, is a distinc-

tion that is difficult for us to make, being in the hazardous materials safety business, between a chemical, a pesticide, a fertilizer, ammonium nitrate, which is a component of explosives, propane, and gasoline running side by side with general commercial traffic on the Interstate Highway System and other public highways, and then saying they are different because of their intended destination.

So we have tried to segment out cases such as field to field, recognizing that field to field is not running on the interstate highway system where emergency responders would be called to deal with vehicles, some of which would be placarded and some of which would not be placarded. In our attempt to recognize that when it is local in character it is one thing, but when it is over-the-road distribution, and basically some of these operations are over the road, we would have to look at them differently.

So that is what we are doing right now. We are taking another look at the subject while recognizing that the petition that is before us at the present time.

Senator BURNS. Mr. Roberts, and I am aware of your concerns and the charge of your office. Just to personally give you a little background, I go back to this old thing that we are facing in agriculture, especially at the production level. Whenever all these rules and regulations come out, they sound good and all that. In agriculture we are faced in a real squeeze right. It is a cost squeeze. Anytime you designate something hazardous, your cost of transportation goes up, everything goes up. Agriculture happens to be the only segment of this silly economy that we have got that buys retail and sells wholesale and pays the freight both ways.

In 1950 it took us 260 bushels of wheat to buy a pickup. Now, it takes us 6000. I do not know how long we are supposed to be asked to survive and to provide fiber and food for this country when we have to accept all the rules, and we pay it. There is no other place to regain that cost, is off the raw product. And sometimes that is unfair. So I think that has to be also looked at, too, as far as when we get into the rulemaking thing.

Mr. Chipkevich, I wonder if you would provide to me and this committee—I notice you also do a lot with pipeline division also—the safety record as far as moving products by pipeline as compared to surface transportation. Has any study been made in that regard, and cost and analysis and the movement of product?

Mr. CHIPKEVICH. We can certainly try to provide you some information for the record, but generally pipeline is recognized as being one of the safest modes of transportation in moving products.

Senator BURNS. I have a reason for asking that, and I appreciate your answer. If you could provide the committee with some of those things.

[The information referred can be found on pages 50–69.]

Senator BURNS. We have a vote coming up, and I am so ill prepared, and I have got to apologize to you. I have been chairing Military Construction. There are a lot of people very intelligent on this Hill, as you know, and I am not one of them. I cannot shift gears that fast from military construction to moving hazardous materials. But I do want to assure you, though, that these proceedings will

be looked at in the movement of future legislation and other legislative legislation.

I know there are—just looking over the list I can see the legislators that have questions. I might ask that those questions be submitted to you in writing and I will submit response to those legislators and send it to the committee. I would certainly appreciate that.

You kind of got caught in a trap when the superintendent is on the floor, and so we are not in it a witness here and so that is all the questions I have. But just concerning about that bill. I will continue to look at those suggestions because I know that we have only got two more days out in Montana. We are not too concerned about what is going on in that interstate, but I am very concerned with what goes up and down those farm roads and everything else. I think for the most part agriculture has done an awfully good job through extension in identifying hazardous materials prevention.

We are dealing with a different kind of an agriculture on the land now, as you well know. They are educated, they understand what they are moving, and I think for the most part pretty understandable, they are pretty responsible in moving some of those materials. It is not like it used to be. I can remember back in the old days when we handled herbicides, if a little was good, a lot was better. And I think we are through those days.

So I appreciate your attendance here this morning, and I am going to, if anybody else does not have any more comments before this committee, I am going to shut her down and go to lunch. I have never missed a meal, nor do I plan to. [Laughter.]

Thank you very much.

[Whereupon, at 11:30 a.m., the hearing was adjourned.]

APPENDIX

PREPARED STATEMENT OF HON. DANIEL K. INOUE, U.S. SENATOR FROM HAWAII

I look forward to the hearing on the reauthorization of the Hazardous Materials Transportation Act. The Federal agency with the primary responsibility for ensuring that the transportation of hazardous materials is carried out safely and quickly is the Research and Special Projects Administration (RSPA) within the Department of Transportation (DOT).

According to the Bureau of Transportation Statistics, there were 287 accidents involving hazardous materials on the nation's highways in 1984. There were an additional 52 such incidents on the United States rail system in that same year. These statistics alone tell us that we have our work cut out for us in reducing the number of incidents and accidents in the transportation of hazardous materials. It does mean to suggest that RSPA's record is not in the century. RSPA is to be commended for its efforts, however, as good as the record is, it can and must be better.

That is what I want to focus on in today's hearing—what is necessary for RSPA to do its job more efficiently and effectively. Now, the Administration has sent a proposal to reauthorize the Hazardous Materials Transportation Act under Title I of its NEXTEA bill. This reauthorization legislation is called the Hazardous Materials Transportation Safety Reauthorization Act (HMTSRA) and my question is whether this proposal gives DOT and RSPA all the tools they need to regulate that transportation.

Some contend that HMTSRA is, for several reasons, a step backward in regulating this transportation. I hope the witnesses will focus on this proposal and help the Committee determine what is the best way to reduce the number of hazardous materials incidents, which all too often have tragic consequences.

I look forward to the testimony and any ideas the witnesses may have for improving hazmat safety.

PREPARED STATEMENT OF HON. DANIEL K. INOUE, U.S. SENATOR FROM HAWAII

Today, this Committee begins the process of reauthorizing the program and the Research and Special Projects Administration (RSPA), the agency that oversees the transportation of hazardous materials. Efforts to maintain the safety of the nation's citizens is, I believe, one of the highest duties of this body. While hazmat transportation regulation is not as well known to most people as other types of transportation regulation, its function is no less necessary.

Fortunately, RSPA has stringent standards for the transportation of hazardous materials and it is no accident that it has an excellent safety record for hazardous materials shipments. However, to maintain and improve this record, we must always search for ways to enhance safety.

That is the reason I look forward to this hearing. The search for ways to make safety even more certain. In this quest I believe we are well served by the witnesses before us today. RSPA can give the Committee an overview of its efforts to date. In the wake of the Valujet tragedy, just a year ago next week, I especially want to hear what measures the agency has undertaken to ensure that such a tragedy does not happen again. The NTSB provides valuable input into the safety process and will, I am sure, tell us what else should be done to enhance safety.

Additionally, the presence of the National Tank Truck Carriers and the Association of Hazardous Waste Transporters, will give us new information and insights on reauthorization from their perspectives. I understand that both organizations have reservations about the Administration's proposal to reauthorize RSPA through the vehicle of the Hazardous Materials Transportation Safety Reauthorization Act (HMTSRA). I want to hear these reservations in order to make any legislation better.

Finally, the West Virginia Public Service Commission is here, represented by its Chairman. RSPA has been a participant and a beneficiary of an extraordinary public/private partnership in regulating this transportation. One part of that partnership is the use of grants to States to aid in the planning for hazmat incidents and in training the emergency responders to such incidents. I hope that the PSC Chair will give us the benefit of her experience on the issue of the State grants as well as on the issue of Federal and State permitting of hazardous materials transportation.

I hope that all the witnesses will look on this hearing as an opportunity to work with us and the other parties to bring about a higher level of safety in the transportation of hazardous materials. Thank you, again, Madam Chair.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. KAY BAILEY HUTCHISON TO
KELLEY S. COYNER

VALUE JET ACCIDENT

Question 1. On May 11, 1996, a ValuJet aircraft crashed shortly after takeoff into the Florida Everglades Swamp. Both pilots, three flight attendants, and all 105 passengers were killed. Before the accident, the flightcrew reported to Air Traffic Control that it was experiencing smoke in the cabin and cockpit. Twenty days after the accident, the National Transportation Safety Board (NTSB) issued a series of urgent recommendations to the FAA and RSPA dealing with the transport of certain hazardous materials (oxidants) on aircraft.

Question 1a. Please summarize the ValuJet recommendations NTSB directed to RSPA and RSPA's response to those recommendations.

Answer. The National Transportation Safety Board (NTSB) made two recommendations to RSPA, which were to be accomplished in cooperation with the Federal Aviation Administration (FAA). In the first recommendation (A-96-29), NTSB recommended that RSPA permanently prohibit the transportation of chemical oxygen generators as cargo on board any passenger or cargo aircraft when the generators have passed expiration dates, and the chemical core has not been depleted. In the second recommendation (A-96-30) NTSB recommended that the transportation of oxidizers and oxidizing materials be prohibited in cargo compartments that do not have fire or smoke detection systems.

In response to the first NTSB recommendation, on December 30, 1996, RSPA issued its Final Rule to prohibit the transportation of all oxygen generators as cargo on passenger-carrying aircraft. This action is broader than NTSB's recommendation since it applies to all oxygen generators, not just those that have passed their expiration dates. RSPA issued a proposed rulemaking on December 30, 1996, addressing NTSB's second recommendation. That rulemaking would allow oxidizers to be transported by air only in accessible locations on cargo aircraft.

Question 1b. RSPA indicated last year it would undertake an examination of current regulations authorizing classes of hazardous materials aboard commercial aircraft. Was the examination undertaken and if so, what did RSPA learn?

Answer. In 1996, RSPA and FAA initiated a joint research project to analyze risk associated with transportation of hazardous materials in aircraft cargo compartments. We are evaluating the risk of transporting hazardous materials in each class of cargo compartments and will compare the determined risks to other aviation transportation risks. The results of this study will be used to evaluate current domestic and international regulations and support rulemaking to manage any areas of high risk identified. In October 1996, the agencies conducted an industry-government public meeting to receive ideas and information on the creation of emergency scenarios by which regulated or unregulated hazardous materials aboard any aircraft may cause or contribute to a disastrous situation and to solicit suggested countermeasures. Subsequently, we developed a multi-branch fault tree for the risk analysis of each disastrous situation under consideration (i.e., explosion, fire, loose gas cylinder, rapid corrosion and toxic release), and established key assumptions that will lead to the quantified assignment of discrete probability values for each leaf and branch of the fault tree analysis. Another, public meeting of government and industry stakeholders is scheduled for June 10-12, 1997, to review and critique: key risk assessment assumptions, a proposed experimental testing plan to be conducted by the FAA Technical Center; and a draft supplement to the report's findings on countermeasures.

Question 1c. Does the Administration's hazardous materials reauthorization request contain any specific provisions to deal with the shipment of hazardous mate-

Question II What type of hazardous materials are contained? Where is the material stored?

by many instances. However, in messenger-carrying aircraft, there is the only practical way to ensure timely delivery of a material, such as delivery of a time-sensitive radiopharmaceutical to a hospital. In other instances, such as for a messenger who needs medical supplies for a temporary station, the messenger may need to transport a hazardous material to the aircraft as cargo so that it is immediately available upon departing. Passenger flights generally never have locations or times frequent enough that cargo aircraft. The carriage of hazardous materials or messenger-carrying aircraft is common in remote areas where other means of transportation are not practical.

Question 2: Are the 11 initiatives reflected in the Administration's 2007-2012 section analysis of the economic stimulus legislation, and if so, are they the same as the ValueJet analysis? If not, what caused the initiatives?

Question 26. How do the 121 inquiries about the 1975-76 undeclared or misdeclared international transactions between rail/highways etc.?

Question 2: Since the payment has been almost in excess of \$100,000, has it been done to deal with undercurrents or to bring them under control?

Answer. RSPA's hazardous materials enforcement program is focused on the manufacture, testing, and storage use of hazardous materials.

Digitized by Google

about coming into compliance. RSPA recently produced and distributed free of charge a half-hour videotape on cylinder retester compliance to nearly 2,000 approved retesters. The video depicts a typical RSPA cylinder retester compliance inspection from start to finish.

Every year, FAA experiences numerous reported hazmat incidents involving luggage. In September 1996, RSPA, in conjunction with FAA, developed an awareness brochure designed to educate the traveling public regarding hazardous materials that may not be permitted in checked and carry-on luggage. This informational brochure is a proactive move by DOT to educate the air traveler, *before* luggage is packed, about permitted and forbidden hazardous materials in checked and carry-on luggage. To date, over six million brochures have been distributed at ticket counters, curbside check-in, and aircraft boarding areas. In our reauthorization proposal, we are seeking authority to permit States to use up to 25 percent of the emergency preparedness grant funds to help industry comply with the Hazardous Materials Regulations. This will enhance awareness of our regulations and the need to comply with them. We are also seeking explicit authority to open and examine the contents of suspicious packages. We will initiate a Pilot Project to evaluate and determine shipper compliance with the Hazardous Materials Regulations using State enforcement personnel. This initiative will encourage States to enforce the Hazardous Materials Regulations with respect to shippers. Most State and local enforcement is directed at carriers.

ADMINISTRATION'S REAUTHORIZATION REQUEST

Question 1. Over the years, the Courts have generally supported DOT's authority to inspect packages containing hazardous materials for safety and enforcement purposes. I note that the Administration's reauthorization request seeks new language to "expressly State the authority of DOT inspectors to conduct inspections."

Question 1a. If DOT already has authority to inspect hazardous materials packages in transit, as well as packages suspected of containing hazardous materials, why is it necessary to place new language in the governing statute?

Answer. The current statutory authority is ambiguous. Section 5121 states that, "The Secretary may authorize an officer, employee, or agent to inspect . . . property related to . . . the transportation of hazardous material in commerce." When anyone questions the authority to open a package, a DOT inspector should be able to point to unambiguous statutory language authorizing that action. We recognize, however, that the authority to open packages should be subject to appropriate limitation. Consequently, the proposed changes would specify that DOT may open only packages which are represented as containing a hazardous material or which there is strong reason to believe contain a hazardous material. The lack of clear statutory authority has resulted in litigation against inspectors for allegedly exceeding their authority. A Federal Railroad Administration inspector has been sued for allegedly violating the constitutional rights of a company while he was enforcing the Hazardous Materials Regulations in a situation involving a non-complying railroad tank car, and that lawsuit is causing concern among DOT hazardous materials inspectors. Although the U.S. Court of Appeals for the Ninth Circuit recently ordered that lawsuit dismissed, the inspector has been "under the cloud" of this litigation for over 2 years and additional appeals are still possible.

Question 1b. How many hazardous materials inspection employees currently work at RSPA, the Federal Railroad Administration, the Federal Highway Administration and the Federal Aviation Administration?

Answer. RSPA is in the midst of hiring 15 new inspectors, which will bring its authorized staffing to 35. Currently 25 inspectors are on board, and five additional applicants have been offered and have accepted inspector positions. RSPA expects the remaining five inspectors to be on board by July 1997.

The Federal Highway Administration's Office of Motor Carriers has approximately 250 field level employees that routinely conduct hazardous material inspections.

In September 1996, Congress authorized the Federal Aviation Administration (FAA) to hire an additional 118 full-time hazardous materials/cargo security inspectors, in addition to the 14 full-time personnel previously devoted to the program. As of May 25, 1997, 83 new inspectors have been hired and are on board. All 118 of the new inspectors should be on board by June 30. All FAA personnel in the Dangerous Goods and Cargo Security Program are devoted full-time to the program.

FRA has a total of 63 Hazardous Materials (HM) Inspectors and 14 Hazardous Materials Specialists nationwide: 45 full-time FRA inspectors and 18 FRA-certified State inspectors (in 12 States). Each of FRA's 8 regions has a Hazardous Materials Specialist and the remaining 6 are at headquarters. In addition, FRA full-time and FRA-certified State inspectors in both the Operating Practices (OP) and the Motive,

Power & Equipment (NIP&E) disciplines conduct HM compliance/enforcement inspections (on railroads) about 1-5 percent of the time in the course of conducting their regular discipline specific inspection duties. At present FRA has 68 full-time OP Inspectors, 16 full-time OP Specialists and 22 FRA-certified State OP Inspectors in 11 States. In the MP&E discipline, FRA has 69 full-time NW&E Inspectors, 14 full-time NIP&E Specialists and 34 FRA-certified State MP&E Inspectors in 17 States.

Question 1c. What percentage of a Federal hazardous materials inspector's time is allocated, on an annual basis, to hazardous materials package/shipment inspections, and how often are DOT inspection personnel on scene at the point where a shipment enters interstate commerce?

Answer. When RSPA inspectors perform shipper inspections, they inspect at the point where a shipment enters interstate commerce. About half of RSPA's annual inspections are conducted at shipper facilities.

Approximately 10 percent of an FHWA-OMC field level investigator's time is spent conducting hazardous materials inspections. Generally, FHWA HM activities consist of compliance reviews and investigations of carrier and shipper facilities. Physical examination of available outbound shipments, and shipments-in-transit, are conducted at that time. In addition, State inspection personnel funded the FHWA's MCSAP conduct approximately 139,000 HM inspections on shipments-in-transit on the roadside. This State inspection activity under MCSAP represents 6.7 percent of all roadside inspections conducted.

The FAA has traditionally concentrated on air carrier compliance: In June 1997, the FAA plans to initiate regular inspections of shippers, primarily aviation repair stations. The FAA estimates that for the remainder of calendar year 1997 it will conduct approximately 500 repair station inspections. Hazardous material compliance inspections of other shippers are estimated to number approximately 250 for the remainder of calendar year 1997. Once FAA's new Dangerous Goods and Cargo Security Program is fully staffed and underway it expects to conduct approximately 1,000 total shipper inspections per year, the majority of which will be aviation repair station facilities.

While FRA hazardous materials inspectors frequently visit shipper's locations, the agency no longer allocates specific time percentages to the various types of compliance activities it conducts. Despite substantial gains in railroad safety—a 75 percent decline in railroad accidents between 1978 and 1993—FRA embraced President Clinton's call for re-inventing government and reassessed its safety program to leverage the agency's resources and establish a team approach that focuses on systemic problems and on results to meet FRA's and the public's expectations for a safer future. In March 1995, FRA announced the Safety Assurance and Compliance Program (SACP), a new approach to safety inspection and encouraging compliance. The cornerstone of the SACP is its methodology for detecting and focusing on the root causes of systemic safety problems, whether on a railroad or with a shipper of hazardous materials. SACP is a systems approach to safety with three major program objectives: Consistency in regulatory application, improving communications with the regulated community, and focusing on the root causes and solutions to systemic safety problems.

FRA inspectors frequently inspect shipper locations as part of their focused enforcement efforts. Whenever they enter a shipper's premises, they are at the point where a shipment enters interstate commerce. In 1994 and 1995, the most recent years for which data is available, FRA's inspectors averaged about 5,000 shipper inspections a year.

Question 1d. How often do DOT inspectors identify and seize a package containing undisclosed hazardous materials? And, is the Administration working closely with the motor carrier, rail, and aviation industry in development of ways to detect and combat undeclared hazardous materials shipments?

Answer. RSPA's inspectors work closely with inspected companies concerning the proper preparation and documentation of hazardous materials shipments. Through training and outreach, such as the information brochure prepared and distributed to air travelers about packing luggage, RSPA and the modal administrations are working with the transportation industry to raise awareness about undeclared hazardous materials shipments.

RSPA's inspection responsibilities normally do not encompass facilities where undisclosed shipments are likely to be detected. Our reauthorization proposal would provide clear statutory authority to open and inspect suspected undeclared shipments of hazardous materials.

It is not a general practice for FHWA-OMC inspectors to seize a package containing undisclosed hazardous materials. When one is discovered, corrective action is typically taken prior to any further movement or enforcement action is taken. OMC

works closely with the affected industry to combat undisclosed hazardous materials shipments through compliance reviews, participation in seminars and association meetings, the development of educational materials, and similar outreach activities designed to communicate new regulations. OMC participates in formal training events sponsored by States, industry associations and other Federal agencies.

In 1996, the FAA opened 593 investigations involving shipments of undeclared hazardous materials. The FAA, in cooperation with RSPA and industry, is working on a number of training, and informational outreach materials to distribute to targeted sectors of the air transportation industry. The FAA has expanded its efforts to contact industry trade associations, airline associations, and airline passengers to raise awareness of the dangers of undeclared hazardous materials shipments and of the regulations and possible penalties which could result from violations.

FRA inspectors do not "seize" non-complying packages of hazardous materials, including those in which the hazardous materials are undeclared or otherwise improperly described.

When a non-complying condition is discovered, the inspector uses informed judgment to select the most appropriate tool to achieve compliance, up to and including enforcement action. When the deficiency is correctable by the railroad at the scene, carrier personnel are notified and, typically, make whatever repairs or changes are necessary. If a fix is best performed by employees of the shipper, either the inspector or the carrier can call the shipper and request that representatives of the company travel to the car and fix it. As a general rule, railroads do not continue non-complying, hazardous materials-laden rail cars in transportation. FRA inspectors frequently attend training sessions with hazmat employees to help them learn the requirements of the regulations, these may be informal, "track side" seminars during the course of an inspection, presentations at meetings of industry associations, or formal classroom settings with the FRA inspector providing all or part of the expertise.

Question 1e. How will the Administration's requested reauthorization language in this area enhance the effectiveness of DOT's inspectors?

Answer. The Administration's requested reauthorization language would provide clearer, unambiguous statutory language, subject to appropriate limitation, authorizing inspectors to open packages which are represented as containing a hazardous material or which there is strong reason to believe contain a hazardous material. This authority would enable inspectors to ensure packages containing hazardous materials meet the requirements of the Hazardous Materials Regulations which are designed to ensure the safe transport of hazardous materials.

Question 2. The Administration's reauthorization request proposes to add new authority covering the issuance of emergency orders.

Question 2a. Does the Administration currently have the authority to issue emergency orders when it determines that an unsafe condition or practice exists that poses a risk to an individual, or significant harm to the environment?

Answer. Although some DOT administrations, under other laws, have this type of authority with respect to safety problems, the five DOT administrations enforcing the hazardous materials transportation law do not have authority under that law to issue emergency orders. The Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration (FRA), and United States Coast Guard, under other safety statutes, have authority to issue emergency orders, but these are not always adequate to address hazardous materials transportation imminent hazards. For example, the Federal Highway Administration can issue an out-of-service order when a truck has defective brakes but cannot do so when a truck is leaking hazardous materials except when the leaks are likely to cause an accident or breakdown. The Research and Special Programs Administration has no such authority with respect to hazardous materials transportation.

FRA has issued 20 emergency orders using its authority under the Federal railroad safety laws, half of those orders involved the transportation of hazardous materials. Two recent emergency orders, numbers 16 and 17 involved tank car structural concerns and ordered inspections of thousands of tank cars. Under the proposed language, FRA would have the clear authority to take a single hazardous materials car, or even a single package containing hazardous materials, out of service on-the-spot. Under the Federal railroad safety laws, FRA inspectors who find cars or locomotives unfit for further service may issue a "special notice for repairs," requiring the railroad to remove them from service until they are restored to a serviceable condition. FRA inspectors who find track not complying with the class at which it is being operated may notify the railroad that the track is henceforth lowered in class—which has the effect of reducing the speed of trains operated over the track—until such time as the track again meets the standards for a higher class. FRA has found these

authorities extremely useful as enforcement tools; similar explicit authority for hazardous materials movements would be beneficial.

Question 2b. How does the Administration anticipate this new authority will be used?

Answer. Each of the five DOT administrations would determine what types of situations in their respective regulatory spheres would meet the statutory criteria for issuance of an emergency order and to what levels or persons in their organizations this authority would be delegated. This authority would be used sparingly and only where necessary. An example of a situation in which this authority could be used would be the discovery of a truck or intermodal container leaking hazardous materials when the carrier or shipper refused to stop transportation until the hazard is rectified. Such a situation, particularly at night or over a weekend, could not be promptly resolved by seeking and obtaining a court injunction.

HAZARDOUS MATERIALS INCIDENT/ACCIDENT RESPONSE TRAINING PROGRAMS

Question 1. Police and firefighters are the first people to respond to hazardous materials spills and accidents. They face the greatest immediate risk of exposure to dangerous hazardous materials. As such we must do everything we can to insure that these "first responders" are thoroughly trained to know how to react to the different chemical properties of hazardous materials. Properly and thoroughly trained first responders is one of the key ways we can best protect citizens from the dangers of hazardous materials.

Question 1a. How does the Administration's reauthorization request improve "first responder" training and State grant assistance?

Answer. The Administration request authorizes use of grant funds for effective training programs for responders. The curriculum development portion of the program provides guidelines for grantees to use in qualifying their courses for the national list of courses published DOT and its interagency partners. The technical assistance portion of the program provides grantees assistance in qualification of their courses. Also, continuing training grant assistance allows those already trained to receive more comprehensive training. The funds are also used to publish and distribute the North American Emergency Response Guidebook, the most widely used emergency response guidance by first responders.

Question 1b. The Administration's reauthorization proposes to cut grants for first responder training in half, going from roughly \$12 million a year down to \$6 million. How does that enhance safety?

Answer. The Administration's proposal does not decrease grants. In 1990, Congress authorized higher grant levels to be funded by the registration program. The level of grants, in the request, more accurately reflects experience in the collection of registration funds and distribution of grants over the first four grant periods. On average, the registration program has collected roughly \$6-7 million annually. Although the authorization levels were higher, actual funds collected and distributed never reached those levels. Thus, our proposal has no impact on the level of training funds provided for first responders.

I would be interested in learning the Administration's views about the pilot hazardous materials response program, referred to as Operation Respond, which was established in the Houston area in 1992. Participants in this pilot program include the Federal Railroad Administration, Houston area railroads, and fire and police officials.

While Operation Respond was first intended as a research and demonstration project to improve information available to first responders at the scene of a hazmat incident, its success has resulted in Operation Respond now becoming a non-profit institute for further research and development. One of its objectives is to develop a computer software system and link 911 or fire and police dispatch centers to a carrier data base containing data about a carrier's contents and handling, instructions. It also is working to improve training programs for first responders dealing with rail and motor carrier accidents.

Question 2a. Does RSPA have a position on Operation Respond's initiatives?

Answer. RSPA believes that Operation Respond has played a useful role in improving the information and communication tools available to first responders. Both its software development products and its emergency response training courses can better prepare local police, fire, and emergency response officials to deal with transport related incidents (primarily hazardous materials, but also rail passenger incidents).

During the fiscal year 1993-FY 1996 period, RSPA has made available \$331,000 in research and development funds to Operation Respond for its efforts in conducting demonstration projects such as emergency planning, and response in Atlanta

during the 1996 Olympics, conversion of the Spanish language version Emergency Response Guide (ERG) into computer software format (CD-ROM), and publication of a lessons learned report. This contribution is part of the Department's larger effort of \$2.7 million. RSPA has also provided programmatic support by designating Operation Respond Institute's computer software and training courses as eligible uses of grant funds made available annually to the Department's Hazardous Materials Emergency Planning grant recipients.

Question 2b. Would the Administration support additional pilot programs such as we have in Texas to other parts of the country?

Answer. Demonstration and deployment of Operation Respond communication systems throughout North America, as well as the success of Operation Respond training, courses, indicate continuing demand for various Operation Respond products and activities. We will review proposals for additional pilot programs in other parts of the country. In addition, States may use their emergency preparedness grants to fund Operation Respond activity.

Question 3. I represent one of the NAFTA border States and, as you know, there are legitimate concerns over the potential public safety risks that may be posed by Mexican hazardous materials transporters. The Office of Motor Carriers has dedicated substantial resources to help construct a commercial vehicle safety program on the other side of the border and I know RSPA supported emergency response teams training in Laredo, Texas and Nuevo Laredo, Mexico in 1995.

Question 3a. Have the border States increased the amount of training provided along the border? If so, please detail by how much and when. If not, please detail why.

Answer. Yes. The four border States are providing additional training through Motor Carrier Safety Assistance Program (MCSAP) grants administered by the Federal Highway Administration (FHWA). These grants are in addition to the normal funding these States would receive and use, in part, for training under the MCSAP program. The four border States received nearly \$1 million in extra grant funds in fiscal year 1995 and \$1.1 million in fiscal year 1996 for enhanced enforcement activities. In fiscal year 1997, FHWA will provide an additional \$1.5 million to the border States in MCSAP funds. The States are using these grants to fund initiatives that will provide a more sustained enforcement presence along the border and improve the compliance level of Mexican operations with U.S. requirements. In support of this objective, part of the grant money is being used for training and education activities, including training on hazardous materials regulations.

Each of the border States is also using a portion of its MCSAP funding for purposes of training Mexican officials in the motor carrier requirements for operating in the U.S. and the requirements of the North American standard inspection criteria, including criteria related to hazardous materials transportation. For example, Arizona has assigned two full-time officers to NAFTA outreach. Since December 1995, these officers have trained 781 Mexican officials in U.S. commercial motor vehicle safety requirements, including hazardous materials safety requirements relevant to motor vehicle safety.

Emergency response training support through the Research and Special Programs Administration (RSPA) Hazardous Materials Emergency Preparedness (HMEP) grants program also increased in fiscal year 1996. Allocations to the four border States under this program totaled approximately \$962,000 in fiscal year 1996, up more than 12 percent from average levels for the two previous years. Overall HMEP amounts to the border States also grew during this time period, with the majority of these funds being used specifically for emergency response training.

Question 3b. Has RSPA funded any hazardous materials training courses in the border States and Mexico?

Answer. In the last 5 years, RSPA, through the Transportation Safety Institute, trained over 400 enforcement and emergency response personnel from U.S.—border States. RSPA has provided training materials to Mexico, but has not funded actual hazmat training, activities in Mexico. RSPA also funded translation of the North American Emergency Response Guidebook into Spanish, thus helping Spanish-speaking first responders in the U.S. and Mexico.

Question 3c. Has RSPA provided any emergency response training along the U.S.-Mexican border?

Answer. RSPA support for emergency response training along the U.S.-Mexican border has been made available through emergency preparedness training grants to the U.S. border States and through support of Operation Respond activities at installations in Mexico, at border crossings, and in the four U.S. border States. Grants under RSPA's Hazardous Materials Emergency Preparedness program have totaled \$3.9 million over 4 years (FY 1993–1996) to the States of California, Arizona, New Mexico, and Texas. RSPA funding of Operation Respond activities has totaled

\$331,000 (FY 1993–1996), with the majority of this support targeted at projects or installations in the U.S. and Mexican border States. Existing and planned Operation Respond communications systems installation locations in the four U.S. border States include Brownsville, Galena Park, Harris County, Houston, Kingwood, Lake Jackson, Laredo, Pasadena, Webb County and Victoria, in Texas; Santa Teresa, New Mexico; Nogales and Tucson, Arizona; and Otay Mesa, Contra Costa County, and San Diego in California. Mexican installation sites include Juarez, Matamoros, Nogales, Nuevo Laredo, Renosa, and Tijuana.

To address emergency response activities that are unique to the border area, the U.S. National Response Team also formed the U.S./Mexico Joint Response Team in order to enhance coordination of response to emergencies on the border.

MISCELLANEOUS QUESTIONS

Question 1. Like all Federal Agencies, RSPA must prepare a strategic plan and formulate specific goals that measure its performance in improving the safety of transportation.

Question 1a. Does RSPA have a strategic plan and would you care to summarize some of its performance measures for the Committee?

Answer. The Department of Transportation is required under the Government Performance and Results Act (GPRA) to prepare a strategic plan for program activities covering at least 5 years, consisting of a comprehensive mission statement and a set of general goals and objectives including the approach that will be used in achieving them. The Department issued its first strategic plan in January, 1994. RSPA issued its strategic plan in November 1995. GPRA further requires that the Department update its strategic plan at least every 3 years. A first draft of the Department's 1997 strategic plan is being developed with RSPA's participation. Following ONM review, we will consult with our field and headquarters staff, our constituencies and the Congress on the content of the Strategic Plan. An annual performance plan is also required of the Department for use in gauging progress toward accomplishment of the longer-term general goals contained in the strategic plan. The Department's first performance plan, together with the performance indicators that will be used to measure performance, is required to be submitted to ONM beginning with the fiscal year 1999 budget request. To ensure that we meet this requirement, each of the Department's operating administrations, including RSPA, provided preliminary performance measures in our fiscal year 1998 budget request. RSPA's performance goals are both qualitative and quantitative in nature and relate to reducing transportation risks. For example, the Office of Hazardous Materials Safety has as its stated goals to maintain or reduce the historically low average annual number of fatalities and serious injuries related to the transportation of hazardous materials, to reduce the environmental consequences of hazardous materials transportation incidents by reducing the average quantity of liquid hazardous materials released to the environment per serious transportation incident by 2 percent per year, and to decrease the percentage of compliance reinspections leading to enforcement cases. RSPA's Office of Pipeline Safety has as its stated performance goals to keep people and the environment safe from the risks pipelines pose and to maintain the reliable cost effective transportation of energy and products through pipelines to American homes and businesses. They are looking to transition from the traditional measures such as the number of inspections performed, accidents investigated, compliance actions initiated or civil penalties/fines assessed and collected to outcome measures. These outcome measures would emphasize government and industry working together to identify more meaningful performance measures, investigating cooperative uses of pipeline industry data bases and working in close coordination with industry and others under risk management demonstration programs.

Question 1b. Is a determination by the NTSB that its hazardous materials safety recommendation issued to RSPA are closed acceptably, currently one of RSPA's performance measures? If not, why?

Answer. RSPA continues to strive to work with the NTSB to close acceptably all its recommendations. We do not have this identified in our fiscal year 1998 budget request as a performance measure but we are in the process of updating the Department's strategic plan and in the process of developing the Department's first annual performance plan. We will consider the merit of framing a performance measure related to NTSB open and closed recommendations.

Question 2. I understand that earlier this year, RSPA issued an Emergency Rule concerning the transport of propane. I also have been informed propane transportation has a very good safety record, something like the risk of incident in the range of 1 in 35 million deliveries. Of course, millions of Americans rely upon propane for

their very basic energy needs, and it is critical to ensure the safe and efficient delivery of this essential commodity.

I am very concerned to hear the RSPA regulation issued in February of this year is impossible for transporters to be in compliance. The technology to accomplish what RSPA wants does not exist at this time. In the interim, RSPA has imposed an "interim operator attendance" requirement for propane bulk tank truck vehicles. As explained to me, that means these companies and transporters would need to hire an additional person to accompany their vehicles, which seems very impractical for these businesses.

I support doing all we can to advance the safe transport of propane and other deemed hazardous materials, but I am concerned that our Federal regulations also must be reasonable. Since several propane companies have requested immediate reconsideration of this requirement on the basis that compliance is not possible, and is not expected to be practicable in the near future.

Question 2a. This seems to be an urgent problem. Without RSPA's action, our propane transporters will be in violation of these regulations simply because they cannot "do the impossible." What is the Department currently doing to address this issue?

Answer. Following the investigation of a September 1996 propane spill at Sanford, North Carolina, the propane industry determined that none of their cargo tanks, as currently equipped, conform to safety regulations that have been in place for nearly 50 years concerning emergency discharge control systems. Consequently, RSPA and the Federal Highway Administration (FHWA) saw a need to provide for the public safety by ensuring the operators can immediately stop the discharge of material in an emergency.

Assuming that an operator is not in compliance with the existing requirements, the Interim Final Rule grants relief by allowing industry to continue operating while we work collaboratively on a technical solution to this issue. Since issuance of the Interim Final Rule, RSPA and FHWA have worked closely with industry to develop a permanent solution to this problem. RSPA held public workshops on March 4 and April 16, 1997, and a public meeting on March 20, 1997.

The Interim Final Rule specifies that an operator must have an unobstructed view of the discharge system and be within arm's reach of a means for closure of the internal valve. There has been some misunderstanding of the Interim Final Rule. Contrary to industry claims, the Interim Final Rule *does not* require two attendants. In fact, the preamble to the rule notes the acceptability of various alternatives that require one attendant only. One alternative being perfected by the propane industry involves use of a radio frequency remote activation device that permits one attendant to immediately stop the discharge from the cargo tank and to shutdown the vehicle's engine.

We are deferring action on a decision with respect to two petitions for reconsideration of the Interim Final Rule until we issue a Final Rule because the petitions for reconsideration raise issues identical to those raised by commenters to the Interim Final Rule. We will address the issues raised by petitioners and commenters in a Final Rule, which we intend to issue by August 15. We are also holding a public meeting on June 23 at the request of several interested parties to discuss the Interim Final Rule requirements and long-term solutions to the cargo tank emergency discharge control system issue.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CONRAD BURNS TO KELLEY S. COYNER

Question 1. Farmers and retailers are very concerned about the outcome of the final HM-200 rule and feel very strongly that the minimal exceptions provided to farmers and the total disregard for retailers will do little to facilitate the efficient and historically safe movements of ag inputs from retail to farm, and will have a devastating economic toll on the agricultural industry. Is the Department giving any reconsideration to the concerns relayed in their petition?

Answer. One of our highest priorities is to address the petition for reconsideration of this Final Rule which was filed by 45 organizations representing agricultural interests. Among the issues the petitioners raised are:

1. The exception allowing continued use of non-specification cargo tank motor vehicles for the transportation of flammable liquid petroleum products in intrastate commerce.

2. Not providing exceptions similar to that provided to farmers for agricultural retailers, farm bureaus, and associated companies.

3. Not providing an exception for the use of installed non-specification air tanks use on oil field service vehicles.

4. The mandatory compliance date of October 1, 1997.

We will carefully consider each of these in responding to the petition by the end of July 1997.

Question 2. It was the understanding of the agricultural community that in meetings with DOT officials and through informal communications with the Congress, that HM-200 was to be implemented 1 year after the Final Rule was published. However, the Final Rule announced an implementation date of October 1, 1997. Why was the implementation date moved up?

Answer. We had fully expected to publish the Final Rule by October 1, 1996, to facilitate its codification in the October 1, 1997, revision of the Code of Federal Regulations. We are sensitive to this concern raised by the agricultural community and we are reviewing the date of mandatory compliance.

Question 3. Would the Department be open to any extension of the implementation date as it relates to the provisions affecting intrastate movements of ag inputs?

Answer. We are sensitive to this concern raised by the agricultural community and we are evaluating the date of mandatory compliance in our handling of their petition for reconsideration.

Question 4. What data does DOT have that proves that movements of ag inputs pose an unreasonable safety threat to public safety and thus must come under the same compliance requirements of interstate commerce on the interstate and major highway routes?

Answer. A hazardous material presents a risk in the transportation system regardless of whether its final intended destination is a factory, a home, or a farm. Consequently, to ensure a uniform and consistent level of safety, Congress mandated that RSPA apply its rules to intrastate shipments of hazardous materials. The result of that mandate is that gasoline, propane, ammonium nitrate fertilizer, and other materials are subject to Federal regulation, and the public enjoy a uniform level of safety, regardless of the materials' ultimate use.

In developing HM-200, we recognized that certain limited exceptions could be granted without a significant impact on safety. For example, RSPA limited the regulation of certain hazardous materials that are transported in limited quantities for use in a company's own business (other than transportation), such as a small propane cylinder used by a plumber, a small can of gasoline used by a lawn mowing company, or a can of spray paint used by utilities to mark underground gas or electric service lines. RSPA refers to these items as "materials of trade".

Also, most incidents occur during loading, unloading, and handling of hazardous materials at locations where the vehicle operator, and other persons, are present. When an incident occurs, we believe that local emergency responders must have the capability to quickly identify the hazardous materials through warnings communicated by placards, labels, and markings on the package and vehicle in order to provide for the public safety.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ERNEST F. HOLLINGS TO
KELLEY S. COYNER

Question 1. I understand that RSPA's "Interim Rule" concerning the propane spill in Sanford, North Carolina is the subject of an "emergency petition" for reconsideration. Would you please detail to the Committee the reasons for the Interim Rule and your response to the petition for reconsideration?

Answer. Following the investigation of a September 1996 propane spill at Sanford, North Carolina, the propane industry determined that none of their cargo tanks, as currently equipped, conform to safety regulations that have been in place for nearly 50 years concerning emergency discharge control systems. Consequently, RSPA and the Federal Highway Administration (FHWA) saw a need to provide for the public safety by ensuring the operators can immediately stop the discharge of material in an emergency.

Assuming that an operator is not in compliance with the existing requirements, the Interim Final Rule grants relief by allowing industry to continue operating while we work collaboratively on a technical solution to this issue. Since issuance of the Interim Final Rule, RSPA and FHWA have worked closely with industry to develop a permanent solution to this problem. RSPA held public workshops on March 4 and April 16, 1997, and a public meeting on March 20, 1997.

The Interim Final Rule specifies that an operator must have an unobstructed view of the discharge system and be within arm's reach of a means for closure of the internal valve. There has been some misunderstanding of the Interim Final Rule.

Contrary to industry claims, the Interim Final Rule *does not* require two attendants. In fact, the preamble to the rule notes the acceptability of various alternatives that require one attendant only. One alternative being perfected by the propane industry involves use of a radio frequency remote activation device that permits one attendant to immediately stop the discharge from the cargo tank and to shutdown the vehicle's engine.

We are deferring action on a decision with respect to two petitions for reconsideration of the Interim Final Rule until we issue a Final Rule because the petitions for reconsideration raise issues identical to those raised by commenters to the Interim Final Rule. We will address the issues raised by petitioners and commenters in a Final Rule, which we intend to issue by August 15. We are also holding a public meeting on June 23 at the request of several interested parties to discuss the Interim Final Rule requirements and long-term solutions to the cargo tank emergency discharge control system issue.

Question 2. 49 U.S.C. 5103(b) and 5106 are separate sections and. I assume, not redundant. That being said, what compels RSPA to determine that section 5106 is unnecessary to your authority? Wouldn't it be wiser to let both stand?

Answer. Section 5106 is redundant with section 5103(b), which requires the Secretary to "prescribe regulations for the safe transportation of hazardous material in intrastate, interstate, and foreign commerce" . . . and States that the regulations ". . . shall govern safety aspects of the transportation of hazardous material the Secretary considers appropriate." Section 5106 merely contains examples of types of activities that may be regulated by the Secretary under section 5103(b). In addition, section 5106, because of the nature of the activities it lists, has the potential to create confusion about the respective responsibilities of the Department of Transportation, the Occupational Safety and Health Administration of the Department of Labor, and the Environmental Protection Agency. Therefore, section 5106 should be eliminated.

Question 3. A portion of RSPA's planning, and training grants are used to pay for RSPA's emergency response guidebook. What are the benefits of this book?

Answer. The Emergency Response Guidebook (ERG) is the Department's most widely distributed technical guide for emergency response personnel. The ERG contains a list of DOT regulated hazardous materials and response procedures to be used at the scene of a transportation incident where hazardous materials may be involved. The Guidebook contains initial isolation and protective action distance guidance and helps emergency responders identify materials which, upon being spilled into water or the atmosphere, would produce a large quantity of toxic vapor or gas or other dangerous situation. This critical information is necessary for emergency responders to protect the public and themselves from hazardous materials spills. Since the first edition more than 20 years ago, DOT has provided more than 6 million copies of the ERG, without charge to the Nation's firefighters, police officers, and other public safety and response agencies. In 1996, working cooperatively with the Canadian and Mexican governments, the DOT issued the first North American Emergency Response Guidebook (NAERG) in Spanish, French and English. Canada, Mexico and the U.S. accept the Guidebook as meeting their regulatory requirements that response information be carried with product shipping papers.

Question 4. RSPA collects nearly \$7 million annually from hazardous materials companies to provide planning and training grants to the States. What are the benefits of this companies to provide program?

Answer. To the present time, 424,000 hazmat emergency responders have been trained, in part, using, grant funds. Also, in the latest year, 511 commodity flow studies, which identify where hazardous materials are being transported to facilitate emergency response planning, were accomplished, 770 exercises were held and 4,477 plans were created or updated. The information gained from State planning efforts will enhance the Federal, State and local governments' understanding of the magnitude of the transportation of HM and may be used by the States to identify where regional hazardous materials emergency response teams should be located.

RSPA grantees have used their grant funds effectively and creatively to train a large number of emergency responders at a modest cost. For example, Arkansas used an educational TV network to provide hazmat training, to emergency responders in their communities. North Carolina uses to provide mobile training facilities to provide technician training and Idaho provides hazmat training in a training center developed in an unused airport. There are over 3 million first responders in this country, most of whom are volunteers. Without the grants program, it is likely that many would receive little or no emergency response training, thus increasing the risk of harm to the responders or to the public.

**RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. INOYE TO
KELLEY S. COYNER**

Question 1. The Department recently issued a rule applying the hazardous materials regulations to intrastate shipments of hazardous materials. What steps were taken in the rule to ensure that small business and companies that ship small amounts of hazardous materials are not adversely affected?

Answer. In the development of this Final Rule, RSPA was sensitive to the potential adverse cost impact that a full application of the Hazardous Materials Regulations (HMR) would have on small businesses engaged in agriculture, construction, retail trade, and a broad assortment of service industries, including lawn maintenance, plumbing, painting, and welding. To that end, RSPA devised a provision in the HMR that prescribes minimal requirements for the safe transportation of "materials of trade." This rule identifies a wide range of permitted materials and their quantity limits; specifies basic requirements for packaging the materials and securing packagings against movement within the motor vehicle; and assures that hazards posed by the materials of trade are adequately communicated for the benefit of the vehicle operator and emergency response personnel.

Question 2. RSPA recently instituted a pilot ticketing program to improve efficiency in its hazardous materials enforcement program. What has been the experience with this program?

Answer. The program became effective on May 15, 1996. The first tickets were issued in June 1996. Since then, the Office of Hazardous Materials Enforcement (OHME) has issued 141 tickets and has closed 107 of them, collecting \$124,765 in penalties. The average penalty for the cases closed, to date is \$1,166.

Of the closed cases, OHME has collected 100 percent of the proposed penalties. None have elected to respond informally to the Office of the Chief Counsel, thereby automatically reverting back to the full civil penalty amount. Ticket actions have taken an average of 39 days from date of issuance to close-out, compared with an average of 16 months for a full enforcement case. Thus, the program appears to be working as envisioned. However, the true effectiveness of the program will not be determined until reinspection of ticketed companies begins in 1998.

Question 3. What is your response to the suggestion that the grants program be reformed to cap the fund at \$18 million and reduce the administration charge.

Answer. Capping the fund at \$18 million would not provide sufficient funding for the next 6 years of the grant program. The result would be a decrease in hazmat planning and training activities, making the possibility of an increased risk to responders and the public in the event of a hazmat accident more likely. RSPA keeps administration charges as low as possible while ensuring effective administration of the grants and registration programs.

**RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. RON WYDEN TO KELLEY S.
COYNER**

Question 1. Does the Department of Transportation's Research and Special Programs Administration (RSPA) agree that the language in S. 104, the Nuclear Waste Policy Act, that provides "Any person that transports spent nuclear fuel or high-level radioactive waste . . . shall comply with all requirements governing such transportation issued by the Federal, State and local governments, and Indian tribes, in the same way and to the same extent that any person engaging in that transportation must comply with such requirements" means that the Hazardous Materials Transportation Act governs nuclear waste shipments?

Answer. The quoted language appears to mean that the Federal hazardous materials transportation law, 49 U.S.C. 5101 *et seq.*, governs nuclear waste shipments. Also, it appears that State or local governments or Indian tribe requirements would apply unless preempted by Federal law. The quoted language in section 203(e) of S. 104 applies to any person that transports ". . . pursuant to a contract with the Secretary." Those persons usually would be Department of Energy contractors. Under the Federal hazardous materials transportation law, specifically 49 U.S.C. 5126(a), a Federal contractor transporting a hazardous material, including nuclear waste, must comply with that law and regulations issued under that law. Because the language quoted in the question concludes with the words, "in the same way and to the same extent that any person engaging in that transportation must comply with such requirements," it appears that a Federal contractor would not have to comply with a State or local government or Indian tribe requirement that is preempted by a Federal law. To clarify this point, the quoted S. 104 language could be amended by adding at the end, "(except a requirement preempted by a law of the United States)," language Congress used in 49 U.S.C. 5126(a).

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. KAY BAILEY HUTCHISON TO
CHARLOTTE R. LANE

Question. What, in your view, is the most important policy action Congress should take in the hazardous materials reauthorization legislation?

Answer. In our opinion implementation of the Hazardous Materials Registration and Permitting Uniform Program is the most important policy action Congress should take in the reauthorization legislation. That implementation will create a true partnership between the Federal Government and the States in the regulation of the highway transportation of hazardous materials.

The Uniform Program originated with the enactment by Congress of Section 22 of the *Hazardous Materials Transportation Uniform Safety Act of 1990* (HMTUSA). HMTUSA, in this regard, foreshadowed the current movement to return authority to the States by firmly establishing a State role in the regulation of hazardous materials transportation. However, the role for the States established by Congress is under siege by certain Federal officials who would replace the Federal-State partnership envisioned by Congress with a single *Federal* program administered in Washington, D.C.

Now Congress has an opportunity to move forward with the implementation of the Uniform Program and to restore the Federal-State partnership it originally envisioned. After 2 years of negotiations between a working group of thirty State and local officials, industry and environmental groups, followed by a 2-year pilot of four States, public and private sectors have reached a consensus for a base-state, reciprocal Uniform Program. By its actions over the last several months, however, FHWA/OMC has made clear that it has no intention of moving forward with the rulemaking necessary to implement the Uniform Program. Instead, the FHWA/OMC has included a pilot for a new *Federal* program in its NEXTEA proposal. The actions taken by the FHWA/OMC related to this matter suggests that it has no intention of implementing Congressional preference for a state-based uniform program.

As envisioned by Congress, the Uniform Program ensures that carriers are qualified to transport hazardous materials by highway by requiring compliance with crucial requirements such as financial responsibility, hazardous materials training and commercial drivers licenses. These requirements will empower States to minimize the incidence and impact of hazmat accidents and releases, rather than relying solely on after-the-fact statistic measures to dictate future resource deployment. In the aftermath of the ValuJet tragedy, it is imperative that States have the authority to minimize and prevent accidents—not just to respond after the incident has occurred.

Congress has the power to implement the Uniform Program in the hazardous materials reauthorization legislation. In so doing Congress will implement a program which represents a rare but logical consensus among the States and industry which will restore the Federal-State partnership which it created with the enactment of Section 22 of the HMTUSA in 1990.

We ask Congress to do exactly what FHWA/OMC has failed to do—implement the Uniform Program pursuant to the recommendations contained in the March 15, 1996 report issued by the Alliance. We pilot States have worked closely with regulated industry to develop legislative language that achieves these objectives while recognizing due process concerns of all parties.

Finally, we ask that Congress authorize the expenditure of Federal funds to facilitate the entry of additional States into the Uniform Program. This request parallels the support provided to implement the mandate for all States to comply with IFTA and IRP in Section 4008 of ISTEA,—with one difference! For IFTA and IRP compliance, Congress mandated \$6.0 million per year for 6 years, of which \$1.0 million was used to coordinate assistance to States with the remainder being provided to States in the form of facilitation grants. We are asking that Congress authorize \$500,000 for coordination and \$2.0 million for facilitation grants per year for a period of 3 years ending September 30, 2000, when all States will be required to comply with the Uniform Program.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ERNEST F. HOLLINGS TO
CHARLOTTE R. LANE

Question. Have you been given any indication by the FHWA as to when it might act on the rulemaking about the four-state pilot program?

Answer. No. The Office of Motor Carriers (OMC), FHWA, has made it clear over the last several months that it has no intention of proceeding with the rulemaking mandated by Congress in Section 22 of the *Hazardous Materials Transportation Uniform Safety Act of 1990*.

On July 9, 1996, the FHWA opened Docket No. MC-96-10, requesting comments on the Final Report of the Interim Governing Board. The Interim Governing Board, the Commercial Vehicle Safety Alliance and representatives of several industry associations filed comments in this proceeding supporting adoption of the Uniform Program. However, the FHWA has taken no further formal action in the docket since the end of the comment period.

We believe this failure to act on the rulemaking is due to OMC's misperception of its duty under Section 22 of HMTUSA. This section clearly established the authority of States to register and permit motor carriers that transport hazardous materials if such State programs are uniform. The Secretary of Transportation was given the authority to promulgate a rule toward that end. Our discussions with OMC staff continue to indicate they think they have authority to determine whether the States should have any program.

Throughout the design and testing of the uniform State program OMC has questioned the process, findings, and results of the Alliance's work. OMC's recalcitrance to recognize widespread support for the Uniform Program belies the Alliance's efforts to bring on board all stakeholders in hazmat transportation public and private sectors. Those efforts included conducting 14 open meetings at which the Alliance considered public comment on the program, prompted continuous negotiation among States and the affected industry, and exchanged information between the States and a sample of motor carriers that participated in the 2 year pilot. For example, the final report of the pilot project reveals that the participating States found numerous carriers that did not meet financial responsibility standards and many more that were not aware of some or all of the Federal requirements for hazardous materials carriers. Still OMC maintains that it has no evidence of the safety value of the Uniform Program. It is important to note that the Commercial Vehicle Safety Alliance (CVSA), the leading international consortium of government and industry motor transportation officials, has recognized the safety value of the program and has endorsed its implementation.

In a meeting on January 31, 1997 with Alliance and industry representatives, FHWA/OMC officials stated to the Alliance that a base-state, reciprocal, uniform program is not part of their vision of the future: their vision being a single Federal program administered in Washington by Federal personnel. Another example of OMC's distorted view on this issue is its comment at the meeting that the Uniform Program was unable to "even get the support of the four pilot states." This comment ignores the fact that the Alliance governing board submitted a docket response unanimously supporting immediate implementation of the Uniform Program. All four pilot States are represented on the Alliance board, and two of those States representatives were attending the FHWA/OMC meeting in question. Furthermore, all four States continue to run the Uniform Program as their permanent program through enabling legislation that was passed by their State legislatures and signed by their Governors. This clearly shows support by the participating States for the Uniform Program.

FHWA/OMC restated their position in a letter dated March 11, 1997 to Congressman Nick J. Rahall of West Virginia. In that letter, the Acting Administrator for FHWA made it clear that FHWA would not proceed with the rulemaking notwithstanding a clear Congressional mandate. In the letter FHWA also stated, "the requested funding would only cover the expenses for 1997 and does not address funding needs in the future years." In this instance FHWA was referring to a resolution passed by the Alliance board at its February 19, 1997 meeting related to Federal support. Therein the board asked Congress to authorize and appropriate "funding to facilitate the entry of new States into the Uniform Program and to cover the expenses of the Governing Board and repository until the time-certain deadline for State entry into the agreement. At that time the Uniform Program will become self-supporting through a financial mechanism jointly developed by the participating States and the regulated industry." A copy of this resolution was transmitted to OMC in a letter dated February 28, 1997.

Instead of proceeding with rulemaking to implement a base-state reciprocal uniform program, which represents an unique consensus between the States and the regulated industry, the FHWA/OMC has included a pilot for a new *Federal* program in its NEXTEA proposal. The NEXTEA proposal reaffirms that OMC does not yet acknowledge that Congress has determined that States have the prerogative to establish a Uniform Program.

In summary, we have complied with and, in many cases, exceeded the mandate that Congress gave the States in HMTUSA. We now ask you to acknowledge the work that we have done, to establish the Uniform Program by statute, and to support our effort to proceed with the more pressing issue of facilitating broader State

participation in the Uniform Program. Only then will the potential benefits of the program be realized by the States and the regulated industry.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. KAY BAILEY HUTCHISON TO
CYNTHIA HILTON

Question 1. Please give us your views on what adverse impacts, if any, have resulted or may result from the court decision, *Massachusetts v. DOT*, you referenced in your testimony.

Answer. The D.C. Circuit Court's decision in *Massachusetts v. DOT* (1) improperly constricts obstacle preemption by failing to recognize that such preemption may be based on an obstacle to the full purposes and objectives of Congress; (2) conflicts with earlier D.C. rulings and the decisions of four other Circuit Courts of Appeal; and (3) misconstrues the preemptive effect of the uniform state-based permitting and registration forms and procedures authorized by 49 U.S.C. § 5119 by holding that DOT may not override State procedures for the transportation of hazardous materials until 26 States approve the recommendations for such state-based forms and procedures.

With respect to the impact of (1), the Court's decision voids the criteria on which DOT has historically applied its "obstacle" test preemption authority, criteria the 101st Congress validated when it codified this test. The criteria are based on U.S. Supreme Court decisions on preemption, primarily *Hines v. Davidowitz*, 312 U.S. 52 (1941). Specifically the decision found that DOT could not preempt a non-Federal requirement under the "obstacle" test where there was not a Federal hazardous material regulation or statutory requirement within the HMTA that dealt with the challenged subject matter. Consequently, DOT has advised that where such specific Federal requirement or directive does not exist that a petition for rulemaking should be filed before a petition for preemption. This requires DOT to institute rulemaking proceedings on any number of non-Federal requirements where the HMRs are silent in order to issue a negative rule, such as "escort vehicles are not needed" or to adopt into the HMRs DOT rules, such as bonding and insurance, that are contained in other authorities of the Secretary. This will:

- delay the ultimate resolution of challenged issues since "it would be impossible for [DOT] to anticipate through notice-and-comment rulemaking what rules the over 30,000 non-Federal jurisdictions might impose that would adversely impact on safety and efficiency"¹; and
- will put these issues—which because of HMR silence should be assumed to be unnecessary for the safe transportation of hazardous materials—in competition for DOT rulemaking staff and resources that should be looking at issues where DOT believes rulemakings are necessary.

With respect to the impact of (2), the decision is binding in a jurisdiction where the government can always be sued. Not only does this decision, therefore, have a chilling effect on the type of issue DOT will be inclined to consider under the "obstacle" test, but it calls into question all prior DOT "obstacle" test rulings. DOT does not support this decision. The Department felt so strongly about the negative consequences of the decision that it petitioned the Court for rehearing.² The Department's petition lays out, from its point of view, the consequences of this decision given its venue. Regrettably, the request for a rehearing was denied. While the Department had the opportunity to go forward to the Supreme Court, given the consequences to "obstacle" test preemption authority, all felt it would be better to ask Congress to reaffirm its understanding of whether or not preemption can be found based on the purposes of the Act. Unless Congress speaks to this issue, DOT will be compelled to interpret "obstacle" test preemption within the narrow view of the Court's decision until, if ever, another opportunity presents itself over which to engage Supreme Court review.

With respect to the impact of (3), the D.C. Circuit Court again ignored legislative history. Congress "strongly noted that [the preemption authority of § 5119] does not refer to or affect any of the other preemption sections in the legislation."³ States could, in fact, rely on this Court's interpretation to veto DOT rulings simply by

¹*Massachusetts v. DOT*, petition for rehearing and suggestion for rehearing in banc, CA DC, No. 95-5175, October 1996, page 11.

²*Massachusetts v. DOT*, petition for rehearing and suggestion for rehearing in banc, CA DC, No. 95-5175, October 1996.

³H.Rept. No 444, Part 2, 101st Cong., 2d Sess. page 25, (1990).

claiming that any non-Federal requirement was a condition of a permit or registration.

The *Massachusetts v. DOT* decision has gutted the way DOT has interpreted its "obstacle" preemption authority since the HMTA was enacted, an interpretation that was ratified by Congress when the obstacle test was codified in 1990, affirming that obstacle preemption was to be based on "standards . . . reflected in Court decisions and . . . documented in the precedents established in administrative rulings issued by the Department."⁴ Congress again is the best authority to reaffirm what has, until the D.C. Circuit Court's decision, been the undisputed scope of DOT's "obstacle" test preemption authority.

Question 2. You indicated that States and industry strongly support the Uniform Program. If that is the case, why would the Administration not be moving forward? Or, is it that only those States that participated in the pilot are actual proponents of a new uniform program?

Answer. The Office of Motor Carriers has been tasked with the implementation of the Uniform Program. We can only speculate as to the reasons it has not moved this Program forward. However, we suggest the following:

- While we have drawn particular attention to the lack of movement on the recommendations of the Uniform Program, OMC has not finalized any of the hazmat delegations it has received from the Secretary of Transportation since 1990.

- Those of us who have participated in every meeting of the working group charged to develop the Uniform Program recommendations and the subsequent meetings of the Interim Governing Board during the pilot test of the Program have watched the lead OMC staff on this Program change nine times.

- The ATA, AWHMT, and NTTC were told at a January 31, 1997 meeting with OMC that industry did not support this program and as evidence reference was made to one letter from a carrier who had not been to any of the meetings to develop and establish the Uniform Program and whose concern reflected misunderstanding of one aspect of the Program.

- At the same meeting, ATA, AWHMT, and NTTC were told that the Uniform Program had not produced the data to show that motor carriers were advantaged by the Program. Although we attested to the accuracy of a National Governors' Association-sponsored survey of industry done during the pilot of the Uniform Program that summarized a number of the Program's benefits to industry, we told OMC that we would be happy to request more data from industry if OMC would supply the questions that they believed were not addressed in the Uniform Program reports. We were promised that questions would be forthcoming. To date, no questions have been delivered.

- OMC has a plan for assessing the performance of motor carriers that relies on past performance and focuses on "bad actors." The plan has no place for the type of pre-qualifying assessment envisioned in the Uniform Program.

- OMC has insisted that the Uniform Program has no safety benefit. This is a contention strenuously denied by the participating states. From industry's point of view, we see two distinct safety benefits from the Program. It serves as an educational tool as carriers are asked to certify compliance with a variety of Federal safety requirements, and it levels the playing field as each participating carrier is held to the same compliance standards verified during mandated onsite audits performed by participating jurisdictions—a feat the Federal Government simply does not have the resources to perform.

Any effort to assess State support for the Uniform Program must consider several facts.

- The burden of complying with nearly 30 state-based hazmat registration and permitting programs in 1990, prompted industry to ask for Federal preemption. The compromise was that States would retain their authority to permit motor carriers but they would have to do it in a uniform and reciprocal way. Those that did not would have their programs preempted. The threat of preemption brought States to the table to work out a uniform program.

- State and local officials from 21 States participated in the development of the Uniform Program recommendations submitted to the Secretary in 1993. In the end, only one state—represented by an environmental agency—voted against the Program. (One other State abstained.) [AZ, CA, CO, DE, IL, KS, MD, MI, MO, MT, NV, NJ, NY, OH, OK, OR, PA, SD, TX, WV, WI]

- Four States elected to pilot test the Uniform Program. After two and a half years, all of the four participating States attest to its benefit.

- OMC has criticized the Governing Board for not recruiting more States to the Program. While OMC has not tasked the Governing Board to preform a recruitment

⁴*Ibid.*

function, AWHMT has asked other states—Illinois and Michigan—to consider the merits of the Uniform Program. Legislation implementing the Program has been introduced in Michigan. In Illinois, legislation to implement the Program is on the Governor's desk.

We support amendments that would authorize and support efforts by the Governing Board to actively recruit additional States to the program.

- The National Governors' Association (NGA) and the National Conference of State Legislatures (NCSL) serve as the executive secretary and staff to the Uniform Program. Neither NGA or NCSL would continue to serve in this capacity if this Program violated principles held by those organizations.

- In July 1994, the NCSL adopted a resolution in support of the Uniform Program and has written letters in support of the recently introduced State legislation mentioned above. NCSL's policy reads in part,

NCSL supports the recommendations of the Alliance for Uniform Hazmat Transportation Procedures [a.k.a. "working group" authorized by §5119(a)] to institute Federal standards to facilitate uniformity in State permitting and registration requirements. These recommendations reflect extensive review and consideration of State and local programs, as well as industry and environmental concerns. The consensus recommendations accommodate, to the extent possible, specific public and private sector concerns.

The Uniform Program in its present form is a compromise. All sides are capable of pointing to one aspect or another of the Program and saying that the provision is not supported. Our support for the Program as a whole, however, results from the belief on the part of industry that Congress will not unilaterally preempt all non-Federal permit and registration programs, and on the part of the States that Congress will preempt all non-Federal permit and registration programs that do not comport to a Uniform Program scheme. If we are misinformed in our belief that Congress insists that States and industry resolve this matter in a uniform, reciprocal way, then we would like to hear how the 105th Congress proposes to remedy this situation. What is unacceptable is to continue the status quo (1) where no action is taken by OMC—those of us who have been involved in this effort since 1991 know that this issue does not need to be further studied; (2) where the States are left in limbo about what is an acceptable uniform, reciprocal program; and (3) where the problem of multiple, overlapping non-Federal registration and permitting schemes have increased since we brought this issue to the attention of the 101st Congress.

Question 3. What, in your view, is the most important policy action Congress should take in the hazardous materials reauthorization legislation?

Answer. The most important policy action the 105th Congress should take in the reauthorization of the Hazardous Materials Transportation Act is to reaffirm and clarify the understandings, interpretation, and promises given when this Act was last substantively amended in 1990. As stated in our testimony, this reaffirmation will require amendments to at least 49 U.S.C. 5101 (pertaining to the purposes of the Act), 5103 (pertaining to the Secretary's regulatory authority), 5107 (pertaining to the scope of OSHA's shared jurisdiction with DOT); 5109 (pertaining to Federal permitting of motor carriers), 5119 (pertaining to state-based registration and permitting of motor carriers), 5125 (pertaining to the preemption authorities of the Act), and 5127 (pertaining to authorizations of appropriations to carry out the manifold responsibilities of the HMTA).

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ERNEST F. HOLLINGS TO CYNTHIA HILTON

Question 1. Your position on 49 U.S.C. 5106 is that it forms the basis of RSPA's authority and cannot be replaced by section 5103(b). Would you detail your analysis of these provisions?

Answer. It was not our intent to suggest that 49 U.S.C. 5106 "forms the basis of RSPA's authority" to regulate the transportation of hazardous materials. The broad delegation of authority to DOT to issue rules for the transportation of hazardous materials in commerce, in fact, stems from 49 U.S.C. 5103(b). However, §5103(b) is wholly open-ended as to what is necessary for safe and efficient hazardous materials transportation. On the other hand, §5106 deals specifically with handling, which is but a part of all that is entailed in the transportation of hazardous materials. Nevertheless, §5106 is the only place currently in the statute where key words like "inspections", "facilities", or "equipment" are used to give shape and meaning to DOT's responsibility to regulate the handling of hazardous materials. We believe an acceptable alternative to the Administration's proposal is to move the substance

of § 5106 to § 5103(b)(1)(B). This change would clarify that the Secretary's authority to regulate the handling of hazardous materials is limited to when those materials are in transportation in commerce and, at the same time, would not lose the distinct areas that have been identified as the Secretary's jurisdiction over the handling of hazardous materials since the HMTA was enacted in 1975.

Question 2. You have voiced concern about RSPA's resources being insufficient for it to effectively police its programs. What level of support is appropriate in your view?

Answer. The Office of Hazardous Materials Safety (OHMS) is DOT's lead agency to oversee the implementation of the HMTA and a trillion dollar industry that employs millions of Americans. Hazardous materials are on every railroad and highway and at every shipping and airport terminal in the United States. As a major export, the transportation of these materials is essential to our trade balance.

Despite its multi-modal, technical mission, OHMS is authorized for only 129 positions, of which only 11, non-supervisory positions, are chemists, engineers, and/or physicists. At the present time, roughly 25 of OHMS's positions, including 3 of the positions requiring a science degree, are vacant. At the same time, OHMS averages 30 discretionary actions—exemptions, approvals, competent authority rulings—each working day. Other actions related to rulemakings, letters, interpretations, enforcement actions, compliance assistance and training, planning and data collection, and the administration of the registration and grants programs add to this workload. Yet, as evidence of OHMS' commitment to performance, it completed within the timeframe set by the Department 100 percent of its goals to eliminate or reform outdated rules during DOT's regulatory reinvention initiative, a feat—either percentage-wise or in terms of sheer numbers of rules revised—not reached by all other modal administrations with more staff.

On a per staff basis OHMS' productivity is exemplary and, as proved during the regulatory reinvention initiative, in the aftermath of the ValuJet tragedy, or in the wake of the metam sodium spill in California, it can marshal resources to accomplish discrete regulatory objectives. Nevertheless, it is falling behind in the processing of routine work. There is unanswered correspondence over a year old, about 150 petitions accepted for rulemaking but waiting for time and opportunity to be considered, and a rolling backlog of over 100 approvals/exemptions have not been processed within the 180-day timeframe set by Congress [49 U.S.C. 5117(c)]. The recent loss of highly acclaimed regulatory technical staff in the rush to beef up FAA's hazardous materials expertise, because OHMS was unable to match the grade/pay level being offered, will also set the Office back.

We understand why the Administration's proposals recommended an authorization of appropriations at the level contained in the President's budget. However, any realistic appraisal of OHMS' workload shows that a decrease in funds authorized is not an appropriate signal to send to OHMS staff, the Congressional Appropriations Committees, the industry, the emergency response community, and the public.

Congress needs to ensure that OHMS has knowledgeable leadership, qualified staff and sufficient resources to carry out its many responsibilities. Any amount less than its last authorization of appropriations would not be adequate.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. INOUE TO
CYNTHIA HILTON

Question 1. How does Section 5107 grant OSHA an unintended delegation of shared responsibility with RSPA?

Answer. Without the exception at § 5107(f)(2), DOT's regulation of hazardous materials under the HMTA would take precedence over OSHA's regulation under the OSHAct because § 4(b)(1) of the OSHAct provides that,

Nothing in this Act shall apply to working conditions of employees with respect to which other Federal agencies . . . exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.

During consideration of the 1990 amendments, concern was expressed that the mandate for DOT to issue regulations for training (§ 5107(a)) would undermine OSHA's then newly implemented HAZWOPER standard (29 CFR 1910.120). To address this concern the so-called "reverse 4(b)(1)" provision was added specifically to what was § 1805 at the time. The provision read,

For purposes of section 653(b)(1) of title 29, no action taken by the Secretary pursuant to this section shall be deemed to be an exercise of statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health. (Emphasis added.)

Unfortunately, a clerical error was made and the word "section" instead of "subsection" was used. Because of the way the pre-recodified version of the HMTA read, it was not easily apparent how the use of the word "section" expanded what legislative history supports as only a protection of OSHA training standards. However, the 1994 recodification made clear that the word "section" subjected other DOT authorities which had appeared in other parts of the pre-recodified version of the HMTA to the reverse (4)(b)(1) language. Specifically, those other authorities are §5106 (handling criteria), §5109 (motor carrier permitting), and §5108 (hazmat registration).

There simply is no rationale for granting shared jurisdiction with OSHA over motor carrier permitting and/or hazmat registration. While handling criteria may be a slightly grayer area, the authority of §5106 has existed since the HMTA was first enacted in 1975.

We recommend that Congress correct this error by eliminating from §5107(f)(2) the words, "and sections 5106, 5108(c)-(g)(1) and (h), and 5109 of this title" and by moving the substance of §5106 to §5103(b)(1)(2) to clarify that the Secretary's authority to regulate handling of hazardous materials must be transportation-related.

Question 2. In your testimony you contend that the State grants program should be "reformed" to reduce the administrative charge and cap the fund at \$18 million. What advantages are there to these actions?

Answer. Among the many recommendations we make to reform the hazmat registration (§5108) and grants program (§5116) are a recommendation to cap the fund at \$18 million and to reduce the administrative charge for processing the registration form. First, we would urge Congress to look collectively at all the reforms we have recommended and not one or two in isolation so that it is clearly understood that we are simply recommending changes that we believe will produce the results anticipated when these provisions were added in 1990.

With regard to the first recommendation specifically mentioned, \$18 million was the amount Congress determined was appropriate to annually finance hazmat planning and training. In fact, Congress intended that the States annually receive only \$5 million for planning grants and \$7.8 million for training grants. The remaining \$5.2 million was to be used for other administrative purposes. Although this funding source to States pales in relationship to the roughly \$150 million available from other Federal programs that support emergency preparedness and response and the safe transportation of hazardous material, industry agreed to support the hazmat registration fee as part of the whole package of amendments enacted in 1990. In keeping with our commitment in 1990, we are reaffirming our commitment to reform the program in ways that will generate the agreed to \$18 million.

With regard to the second recommendation specifically mentioned, RSPA currently assesses a \$50 fee for processing the hazmat registration form. This fee is in addition to the fee paid to support the above referenced \$18 million fund. Our recommendation does not say that industry not pay the \$50 per company fee, but it does say that \$50 to enter the data from the registration form and give an applicant a unique identification number is excessive. We believe this amount can and should be reduced. Whatever can be saved from this process—\$20–30 per registration—should be reserved and returned to States for the purpose of enforcing the registration program. We believe one of the reasons the hazmat registration program has failed to generate the \$18 million is that States do not have an incentive to enforce the program—75 percent of all grant assistance must be passed through to localities.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. KAY BAILEY HUTCHISON TO
ROBERT CHIPKEVICH

Question 1. The NTSB has a long and commendable history of seeking improvements in hazardous materials transportation practices.

Question 1a. In the NTSB accident and incident investigations, has it identified undeclared hazardous materials shipments to be a major transportation safety problem?

Answer. The Safety Board has addressed the issue of safely transporting hazardous materials by air in several accident investigation reports. In the Safety Board's accident report on the in-flight fire aboard an American Airlines DC-9, in Nashville, Tennessee, on February 3, 1988, the Safety Board addressed the problem of undeclared hazardous materials shipments. Further, recommendations were made to the industry to develop a program to more effectively inform and warn passengers and shippers about restrictions and safety requirements for hazardous materials and to improve methods of detecting undeclared hazardous materials offered

for air transportation. In this report, the Safety Board also recommended that the Research and Special Programs Administration (RSPA) and the Federal Aviation Administration (FAA) improve posting requirements posting hazardous materials restriction notices. Most recently, following the ValuJet accident on May 11, 1997, the Safety Board on May 31, 1997, recommended that the FAA immediately evaluate the practices of and training provided by all air carriers for accepting passenger baggage and freight shipments (including company materials) and for identifying undeclared or unauthorized hazardous materials that are offered for transport.

Question 1b. If the NTSB were to identify the most serious safety problem in hazardous materials transportation area, what would it be?

Answer. In aviation transportation, the transport of undeclared hazardous materials aboard aircraft and the transport of oxidizers and oxidizing materials in cargo compartments that do not have fire or smoke detection systems.

Question 1c. Has the NTSB ever issued recommendations to RSPA calling for improvements in the training of hazardous materials transportation employees and/or hazardous materials emergency response personnel?

Answer. Yes, the Safety Board on several occasions has asked for improvements in hazardous materials training requirements for transportation employees and emergency response personnel. Below is a computer printout summary of those safety recommendations.

National Transportation Safety Board

Status of Hazardous Materials Safety Recommendations to RSPA

Jan. 1988 to May 1997

MODE	CEX	CAA	CAAA	CUA	CUAS	CR	CS	CNLA	Total Closed	OAA	OAAR	OUR	ORR	OAR	Total Open	Total Issued	Total Acceptance Rate
RSPA	0	4	2	3	0	1	0	1	11	17	0	6	0	0	23	34	71.88%

Definition of Status Assignments:

CEX:	Closed--Exceeds Recommended Action	OAA:	Open--Acceptable Response
CAA:	Closed--Acceptable Action	OAAR:	Open--Acceptable Alternate Response
CAAA:	Closed--Acceptable Alternate Action	OUR:	Open--Unacceptable Response
CUA:	Closed--Unacceptable Action	ORR:	Open--Response Received
CUAS:	Closed--Unacceptable Action/Superseded	OAR:	Open--Await Response
CR:	Closed--Reconsidered		
CS:	Closed--Superseded		
CNLA:	Closed--No Longer Applicable		

Recommendation Report

Wednesday, May 28, 1997

ISSUE DATE:1/1/88 - 5/31/97 ADDRESSEE:RSPA

Log Number 2101A

Issue Date 10/24/88

NASHVILLE TN

2/3/88

ON FEBRUARY 3, 1988, AMERICAN AIRLINES FLIGHT 132, A MCDONNELL DOUGLAS DC-9-83, DEPARTED DALLAS/FORT WORTH INTERNATIONAL AIRPORT, TEXAS, FOR NASHVILLE METROPOLITAN AIRPORT, TENNESSEE. IN ADDITION TO THE PASSENGER LUGGAGE IN THE MIDCARGO COMPARTMENT, FLIGHT 132 WAS LOADED WITH A 104 POUND FIBER DRUM OF TEXTILE TREATMENT CHEMICALS. UNDECLARED AND IMPROPERLY PACKAGED HAZARDOUS MATERIALS INSIDE THE FIBER DRUM INCLUDED 5 GALLONS OF HYDROGEN PEROXIDE SOLUTION AND 25 POUNDS OF A SODIUM ORTHOSILICATE-BASED MIXTURE. WHILE IN FLIGHT, A FLIGHT ATTENDANT AND A DEADHEADING FIRST OFFICER NOTIFIED THE COCKPIT CREW OF SMOKE IN THE PASSENGER CABIN. THE PASSENGER CABIN FLOOR ABOVE THE CARGO COMPARTMENT WAS HOT AND SOFT, AND THE FLIGHT ATTENDANTS HAD TO MOVE PASSENGERS FROM THE AFFECTED AREA. THE CAPTAIN, WHO WAS AWARE OF A MECHANICAL DISCREPANCY WITH THE AUXILIARY POWER UNIT (APU) ON AN EARLIER FLIGHT WHICH RESULTED IN IN-FLIGHT FUMES, WAS SKEPTICAL ABOUT THE FLIGHT ATTENDANT'S REPORT OF SMOKE. NO IN-FLIGHT EMERGENCY WAS DECLARED. AFTER LANDING, THE CAPTAIN NOTIFIED NASHVILLE GROUND CONTROL ABOUT THE POSSIBILITY OF FIRE IN THE CARGO COMPARTMENT, AND HE REQUESTED FIRE EQUIPMENT. THE FLIGHT ATTENDANTS THEN INITIATED PROCEDURES TO EVACUATE THE AIRPLANE ON THE TAXIWAY. ABOUT 2 MINUTES 8 SECONDS AFTER THE PLANE LANDED, THE 120 PASSENGERS AND 6 CREWMEMBERS BEGAN EVACUATING THE AIRPLANE. AFTER THE PLANE WAS EVACUATED, CRASH/FIRE/RESCUE PERSONNEL EXTINGUISHED THE FIRE IN THE CARGO COMPARTMENT.

Recommendation # A-88-120

Overall Status
CAA

Priority
CLASS II

THE NTSB RECOMMENDS THAT THE RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION: REQUIRE HAZARDOUS MATERIALS RESTRICTION NOTICES TO BE POSTED AT ALL AIR TRANSPORTATION FREIGHT ACCEPTANCE FACILITIES INCLUDING AIR FREIGHT FORWARDER FACILITIES.

RSPA

CLOSED - ACCEPTABLE

2/15/94

Recommendation Report

Wednesday, May 28, 1997

ISSUE DATE:1/1/88 - 5/31/97 ADDRESSEE:RSPA

Log Number 2604A

Issue Date 5/31/96

MIAMI FL

5/11/96

ON 5/11/96, ABOUT 1415 EASTERN DAYLIGHT TIME, A MCDONNELL DOUGLAS DC-9-32 CRASHED INTO THE EVERGLADES SWAMP SHORTLY AFTER TAKEOFF FROM MIAMI INTERNATIONAL AIRPORT, MIAMI FLORIDA. THE AIRPLANE, N904VJ, WAS OPERATED BY VALUJET AIRLINES, INC., AS VALUJET FLIGHT FLIGHT 592. BOTH PILOTS, THE THREE FLIGHT ATTENDANTS, & ALL 105 PASSENGERS WERE KILLED. BEFORE THE ACCIDENT, THE FLIGHTCREW REPORTED TO AIR TRAFFIC CONTROL THAT IT WAS EXPERIENCING SMOKE IN THE CABIN & COCKPIT. VISUAL METEOROLOGICAL CONDITIONS EXISTED IN THE MIAMI AREA AT THE TIME OF THE TAKEOFF. THE DESTINATION OF THE FLIGHT WAS HARTSFIELD INTERNATIONAL AIRPORT, ATLANTA, GEORGIA. FLIGHT 592 WAS ON AN INSTRUMENT FLIGHT RULES FLIGHT PLAN.

Recommendation # A-96-029

Overall Status
OAA

Priority
CLASS I

THE NTSB RECOMMENDS THAT THE RSPA: IN COOPERATION WITH THE FAA, PERMANENTLY PROHIBIT TRANSPORTATION OF CHEMICAL OXYGEN GENERATORS AS CARGO ON BOARD ANY PASSENGER OR CARGO AIRCRAFT WHEN THE GENERATORS HAVE PASSED EXPIRATION DATES, & CHEMICAL CORE HAS NOT BEEN DEPLETED.

RSPA

OPEN-ACCEPTABLE RESPONSE

Recommendation # A-96-030

Overall Status
OAA

Priority
CLASS I

THE NTSB RECOMMENDS THAT THE RSPA: IN COOPERATION WITH FAA, PROHIBIT THE TRANSPORTATION OF OXIDIZERS & OXIDIZING MATERIALS (E.G., NITRIC ACID) IN CARGO COMPARTMENTS THAT DO NOT HAVE FIRE OR SMOKE DETECTION SYSTEMS.

RSPA

OPEN-ACCEPTABLE RESPONSE

Recommendation Report

Wednesday, May 28, 1997

ISSUE DATE:1/1/88 - 5/31/97 ADDRESSEE:RSPA

Log Number H-0519

Issue Date 7/7/88

SONORA KY

1/5/88

ON JANUARY 4, 1988, AN MC 307 TANK TRAILER OPERATED BY DSI TRANSPORT, INC. (DSI), DEPARTED THE AIR PRODUCTS, INC., TERMINAL IN ST. GABRIEL, LOUISIANA, WITH 39,000 POUNDS OF MONO-ISOPROPYLAMINE, A FLAMMABLE LIQUID. THE TRUCK WAS EN ROUTE TO THE PENNWALT CORPORATION'S PLANT IN WYANDOTTE, MICHIGAN. THE TRUCKDRIVER REPORTED THAT ABOUT 5:30 P.M. ON JANUARY 5, AS THE TRUCK WAS PROCEEDING NORTHBOUND ON INTERSTATE 65 ABOUT 3 MILES NORTH OF SONORA, KENTUCKY, HE HEARD A LOUD NOISE SIMILAR TO A BLOWOUT AND THE TRUCK JERKED HARD TO HIS LEFT. IN THE SIDEVIEW MIRROR, THE TRUCKDRIVER SAW SPARKS COMING FROM THE REAR OF THE VEHICLE. ALTHOUGH DIFFICULT, THE TRUCKDRIVER MOVED THE VEHICLE ONTO THE SHOULDER OF THE ROAD AND STOPPED. HE DISEMBARKED AND EXTINGUISHED A FIRE BENEATH THE TRAILER WHICH HE BELIEVED WAS BEING FUELED BY GREASE ON THE SUPPORT PADS OF THE TRAILER'S DOLLY LEGS.

Recommendation # H-88-026

Overall Status
CUA

Priority
CLASS II

THE NTSB RECOMMENDS THAT THE RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION: ESTABLISH QUANTITATIVE CRITERIA FOR DETERMINING WHEN DEPARTMENT OF TRANSPORTATION SPECIFICATION CARGO TANKS MUST BE PROTECTED AGAINST VACUUM FAILURE. THE CRITERIA SHOULD PRESCRIBE EXPLICIT STANDARDS FOR DESIGN, OPERATION, AND MAINTENANCE OF VACUUM RELIEF DEVICES WHEN REQUIRED.

RSPA

CLOSED - UNACCEPTABLE ACTION

3/7/94

Recommendation # H-88-027

Overall Status
CUA

Priority
CLASS II

THE NTSB RECOMMENDS THAT THE RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION: REVISE THE CRITERIA FOR REPORTING HAZARDOUS MATERIALS INCIDENTS TO INCLUDE VACUUM FAILURES OF CARGO TANKS.

RSPA

CLOSED - UNACCEPTABLE ACTION

3/7/94

Recommendation Report

Wednesday, May 28, 1997

ISSUE DATE:1/1/88 - 5/31/97 ADDRESSEE:RSPA

Log Number H-0553

Issue Date 9/12/90

ASHLAND VA

12/28/88

ABOUT 5:15 A.M. LOCAL TIME ON DECEMBER 28, 1988, THE DRIVER OF A TRACTOR-SEMITRAILER OPERATED BY VIRGINIA CHEMICAL COMPANY, INC. (VIRGINIA CHEMICAL) OF PORTSMOUTH, VIRGINIA, WAS OFF-LOADING SULFUR DIOXIDE INTO A STORAGE TANK AT BEAR ISLAND PAPER COMPANY (BEAR ISLAND) IN ASHLAND, VIRGINIA, WHEN A NIPPLE IN THE MC-331 CARGO TANK'S DISCHARGE SYSTEM CRACKED AND FAILED. THE FAILURE RESULTED IN THE UNINTENTIONAL RELEASE OF 40,900 POUNDS OF SULFUR DIOXIDE, A NONFLAMMABLE GAS. THE DRIVER ATTEMPTED TO ESCAPE THE VAPOR CLOUD BUT WAS OVERCOME BY THE HIGHLY TOXIC GAS AND SUFFERED FATAL INJURIES; 14 OTHER INDIVIDUALS WERE TAKEN TO THE HOSPITAL FOR TREATMENT AND WERE RELEASED.

Recommendation # H-90-091

Overall Status
OUA

Priority
CLASS II

THE NTSB RECOMMENDS THAT THE RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION: REQUIRE CONTROLS FOR INTERNAL SHUT-OFF VALVES FOR THE DISCHARGE SYSTEM TO BE INSTALLED AT REMOTE LOCATIONS ON ALL NEWLY CONSTRUCTED AND CURRENTLY AUTHORIZED DEPARTMENT OF TRANSPORTATION SPECIFICATION CARGO TANKS THAT ARE USED FOR THE TRANSPORTATION OF ANY HAZARDOUS MATERIALS.

RSPA

OPEN - UNACCEPTABLE ACTION

Recommendation Report

Wednesday, May 28, 1997

ISSUE DATE:1/1/88 - 5/31/97 ADDRESSEE:RSPA

Log Number H-0561A

Issue Date 10/12/91

CARMICHAEL CA

2/13/91

ABOUT 3 A.M. PACIFIC STANDARD TIME ON FEBRUARY 13, 1991 A TRACTOR- SEMITRAILER (CARGO TANK) OVERTURNED AS THE VEHICLE WAS TRAVELING ON A MAIN URBAN ROADWAY IN CARMICHAEL, CALIFORNIA. AT THE TIME OF THE ACCIDENT, THE CARGO TANK CONTAINED ABOUT 8,800 GALLONS OF AUTOMOTIVE GASOLINE THAT WAS BEING TRANSPORTED BY INTRASTATE DELIVERY TO A SERVICE STATION. GASOLINE FROM THE CARGO TANK SPILLED INTO A NEARBY DRAINAGE DITCH AND ENTERED THE UNDERGROUND DRAINAGE SYSTEM. GASOLINE VAPORS IGNITED FROM AN UNDERTERMINED IGNITION SOURCE, AND THE FIRE FLASHED BACK AND ENGULFED THE OVERTURNED CARGO TANK. IN ADDITION TO THE TOTAL LOSS OF THE TANK TRUCK, ITS CARGO, AND TWO PARKED CARS, FOUR HOMES AND THEIR CONTENTS WERE DESTROYED OR HEAVILY DAMAGED BY FIRE, AND THE RESIDENTS FROM A 2-MILE-SQUARE AREA WERE EVACUATED. TOTAL PROPERTY DAMAGE AND CLEANUP COSTS WERE ESTIMATED AT NEARLY \$1 MILLION. THERE WERE THREE MINOR INJURIES.

Recommendation # H-91-034

Overall Status
CAA

Priority
CLASS II

THE NTSB RECOMMENDS THAT THE RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION: REQUIRE THAT ALL FITTINGS AND DEVICES MOUNTED ON MANHOLE COVER OF CARGO TANKS MEET THE SAME PERFORMANCE STANDARD TO WITHSTAND THE STATIC INTERNAL FLUID PRESSURE AS THAT REQUIRED FOR THE MANHOLE COVER.

RSPA

CLOSED - ACCEPTABLE

11/8/96

Recommendation Report

Wednesday, May 28, 1997

ISSUE DATE:1/1/88 - 5/31/97 ADDRESSEE:RSPA

Log Number H-0562

Issue Date 3/20/92

BETWEEN JANUARY AND MAY 1991, THE NATIONAL TRANSPORTATION SAFETY BOARD INVESTIGATED SEVEN HIGHWAY ACCIDENTS IN WHICH DEPARTMENT OF TRANSPORTATION (DOT) SPECIFICATION MC 306 OR MC 312 CARGO TANKS OVERTURNED AND HAZARDOUS MATERIALS WERE RELEASED THROUGH DAMAGED CLOSURES OR FITTINGS ON TOP OF THE TANKS. UNDER DOT REGULATIONS, ALL OF THE TANKS WERE REQUIRED TO HAVE ROLLOVER PROTECTION FOR THE FITTINGS ON THE TOP OF THE TANKS. ALL OF THE TANKS WERE EQUIPPED WITH RAILS OR GUARDS ATTACHED TO THE TANK TO PROVIDE THAT PROTECTION. THE FAILURE OF THE DEVICES TO PROVIDE ADEQUATE ROLLOVER PROTECTION RAISED CONCERNS ABOUT THEIR PERFORMANCE, AND ABOUT THE ADEQUACY AND ENFORCEMENT OF THE DOT REQUIREMENTS REGARDING THE STRUCTURAL INTEGRITY AND THE CONFIGURATION OF THE ROLLOVER PROTECTION DEVICES. THE SAFETY BOARD HAS ADDRESSED THESE ISSUES IN A SPECIAL INVESTIGATION ON CARGO TANK ROLLOVER PROTECTION. THE RELEASE OF HAZARDOUS MATERIALS IN EACH OF THE SEVEN ACCIDENTS OCCURRED BECAUSE CLOSURE FITTINGS ON TOP OF THE TANKS WERE EITHER DAMAGED OR FORCED OPEN AFTER STRIKING THE GROUND OR OBJECTS ALONG THE ROADWAY. THE CLOSURE FITTINGS WERE VULNERABLE TO DAMAGE BECAUSE THE ROLLOVER PROTECTION GUARDS STRUCTURALLY FAILED IN THREE OF THE ACCIDENTS (ALBUQUERQUE, NEW MEXICO; HAMILTON, OHIO; AND ETHELSVILLE, ALABAMA), AND WERE NOT ADEQUATELY SHIELDED FROM EXTERNAL IMPACTS IN THE REMAINING FOUR ACCIDENTS (LANTANA, FLORIDA; EDENTON, NORTH CAROLINA; COLUMBUS, GEORGIA; AND BRONX, NEW YORK).

Recommendation #	H-92-001	Overall Status	Priority
		OAA	CLASS II

THE NTSB RECOMMENDS THAT THE RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION: PROVIDE CARGO TANK MANUFACTURERS WITH SPECIFIC WRITTEN GUIDANCE ABOUT (A) THE FACTORS AND ASSUMPTIONS THAT MUST BE CONSIDERED WHEN CALCULATING THE LOADS ON CARGO TANK ROLLOVER PROTECTION DEVICES IN DETERMINING COMPLIANCE WITH EXISTING DEPARTMENT OF TRANSPORTATION PERFORMANCE STANDARDS; AND (B) ACCEPTABLE MEANS TO SHIELD AND PROTECT THE TOP-MOUNTED CLOSURE FITTINGS ON ALL BULK LIQUID CARGO TANKS.

RSPA	OPEN-ACCEPTABLE RESPONSE
------	--------------------------

Recommendation #	H-92-002	Overall Status	Priority
		OAA	CLASS II

THE NTSB RECOMMENDS THAT THE RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION: ASSIST THE FEDERAL HIGHWAY ADMINISTRATION TO EVALUATE THE DESIGN OF THE ROLLOVER PROTECTION DEVICES INSTALLED ON ALL CARGO TANKS MANUFACTURED BY THE ACRO TRAILER COMPANY AND BY NEW PROGRESS, INCORPORATED, TO DETERMINE IF THE CARGO TANKS COMPLY WITH EXISTING DEPARTMENT OF TRANSPORTATION STANDARDS.

RSPA	OPEN-ACCEPTABLE RESPONSE
------	--------------------------

Recommendation #	H-92-003	Overall Status	Priority
		OAA	CLASS II

THE NTSB RECOMMENDS THAT THE RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION: ASSIST THE FEDERAL HIGHWAY ADMINISTRATION TO IMPROVE THE PERFORMANCE OF THE ROLLOVER PROTECTION DEVICES ON BULK LIQUID CARGO TANKS BY: MODELING AND ANALYZING THE FORCES THAT CAN ACT UPON ROLLOVER PROTECTION DEVICES DURING A ROLLOVER ACCIDENT.

RSPA	OPEN-ACCEPTABLE RESPONSE
------	--------------------------

Recommendation Report

Wednesday, May 28, 1997

ISSUE DATE:1/1/88 - 5/31/87 ADDRESSEE:RSPA

Recommendation #	H-92-004	Overall Status	Priority
		OAA	CLASS II

THE NTSB RECOMMENDS THAT THE RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION: ASSIST THE FEDERAL HIGHWAY ADMINISTRATION TO IMPROVE THE PERFORMANCE OF THE ROLLOVER PROTECTION DEVICES ON BULK LIQUID CARGO TANKS BY: PROMULGATING PERFORMANCE STANDARDS FOR ROLLOVER PROTECTION DEVICES THAT ARE BASED ON THE ENGINEERING MODELING AND ANALYSIS CONDUCTED IN RESPONSE TO SAFETY RECOMMENDATIONS H-92-03.

RSPA

OPEN-ACCEPTABLE RESPONSE

Recommendation #	H-92-005	Overall Status	Priority
		OAA	CLASS II

THE NTSB RECOMMENDS THAT THE RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION: ASSIST THE FEDERAL HIGHWAY ADMINISTRATION TO IMPROVE THE PERFORMANCE OF THE ROLLOVER PROTECTION DEVICES ON BULK LIQUID CARGO TANKS BY: PHASING OUT FROM HAZARDOUS MATERIALS SERVICE THE USE OF ALL CARGO TANKS THAT FAIL TO MEET THE NEW PERFORMANCE STANDARDS PROMULGATED IN RESPONSE TO SAFETY RECOMMENDATION H-92-4.

RSPA

OPEN-ACCEPTABLE RESPONSE

Recommendation #	H-92-005	Overall Status	Priority
		OAA	CLASS II

THE NTSB RECOMMENDS THAT THE RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION: IMPLEMENT, IN COOPERATION WITH THE FEDERAL HIGHWAY ADMINISTRATION, A PROGRAM TO COLLECT INFORMATION NECESSARY TO IDENTIFY PATTERNS OF CARGO TANK EQUIPMENT FAILURES, INCLUDING THE REPORTING OF ALL ACCIDENTS INVOLVING A DEPARTMENT OF TRANSPORTATION SPECIFICATION CARGO TANK.

RSPA

OPEN-ACCEPTABLE RESPONSE

Recommendation Report

Wednesday, May 28, 1997

ISSUE DATE:1/1/88 - 5/31/97 ADDRESSEE:RSPA

Log Number H-0573

Issue Date 10/4/93

ROCKVILLE MD 5/12/93

ABOUT 6:55 A.M. ON MAY 12, 1993, A FIRE STARTED AS GASOLINE WAS BEING TRANSFERRED FROM A TANK TRUCK TO AN UNDERGROUND STORAGE TANK ADJACENT TO A MAINTENANCE BUILDING AT THE BROOKE MANOR COUNTRY CLUB IN ROCKVILLE, MONTGOMERY COUNTY, MARYLAND. UNITS FROM THE MONTGOMERY COUNTY FIRE-RESCUE SERVICE RESPONDED TO THE FIRE.

Recommendation # H-93-034

Overall Status
OAA

Priority
CLASS II

THE NTSB RECOMMENDS THAT THE RSPA: REQUIRE THAT THE REMOTE CONTROL MECHANISMS FOR INTERNAL SHUTOFF VALVES BE MARKED FOR EMERGENCY USE ON ALL CARGO TANKS AUTHORIZED FOR THE TRANSPORTATION OF HAZARDOUS MATERIALS.

RSPA

OPEN-ACCEPTABLE RESPONSE

Recommendation Report

Wednesday, May 28, 1997

ISSUE DATE:1/1/88 - 5/31/97 ADDRESSEE:RSPA

Log Number H-0584A

Issue Date 11/27/95

WHITE PLAINS NY

7/27/94

ABOUT 12:30 A.M., ON 7/27/94, A TRACTOR CARGO-TANK SEMITRAILER LOADED WITH 9,200 GALLONS OF PROPANE (LIQUEFIED PETROLEUM GAS) & OPERATED BY SUBURBAN PARACO CORPORATION WAS TRAVELING EAST OF INTERSTATE 287 IN WHILE PLAINS, NEW YORK. THE TRUCK DRIFTED ACROSS THE LEFT LANE ONTO THE LEFT SHOULDER & STRUCK THE GUARDRAIL: THE TANK HIT A COLUMN OF THE GRANT AVENUE OVERPASS. THE TRACTOR & THE SEMITRAILER SEPARATED, & THE FRONT HEAD OF THE TANK FRACTURED, RELEASING THE PROPANE, WHICH VAPORIZED INTO GAS. THE RESULTING VAPOR CLOUD EXPANDED UNTIL IT FOUND A SOURCE OF IGNITION. WHEN IT IGNITED, ACCORDING TO AN EYEWITNESS, A FIREBALL ROSE 200 OR 300 HUNDRED FEET IN THE AIR. THE TANK WAS PROPELLED NORTHWARD ABOUT 300 FEET & LANDED ON A FRAME HOUSE, ENGULFING IT IN FLAMES. THE DRIVER WAS KILLED, 23 PEOPLE WERE INJURED, & AN AREA WITH A RADIUS OF APPROXIMATELY 400 FEET WAS ENGULFED BY FIRE.

Recommendation # H-95-037

Overall Status
OAA

Priority
CLASS II

THE NTSB RECOMMENDS THAT THE RESP: IN COOPERATION WITH FHWA, STUDY METHODS DEVELOP STANDARDS TO IMPROVE THE CRASHWORTHINESS OF FRONT HEADS ON CARGO TANKS USED TO TRANSPORT LIQUEFIED FLAMMABLE GASES & POTENTIALLY LETHAL NONFLAMMABLE COMPRESSED GASES.

RSPA

OPEN-ACCEPTABLE RESPONSE

Recommendation Report

Wednesday, May 28, 1997

ISSUE DATE:1/1/88 - 5/31/97 ADDRESSEE:RSPA

Log Number I-0090B

Issue Date 10/24/88

NEW ORLEANS LA

9/9/87

ON SEPTEMBER 8, 1987, A NEW ORLEANS TERMINAL (NOT) CREW MOVED SIX TANK CARS OF BUTADIENE FROM THE NOT'S OLIVER YARD IN NEW ORLEANS, LOUISIANA, AND AT 7:35 P.M. PLACED THEM ON TRACK NO. 3 OF THE CSX TRANSPORTATION'S (CSXT) TERMINAL JUNCTION INTERCHANGE YARD (INTERCHANGE YARD) FOR DELIVERY TO THE CSXT. ABOUT 1:50 A.M. ON SEPTEMBER 9, 1987, BUTADIENE LEAKING FROM ONE OF THE TANK CARS WAS IGNITED AND THE RESULTING FLAMES RISING ABOUT 100 FEET INTO THE AIR ENGULFED BOTH BRIDGE SPANS OF INTERSTATE 10. THE FIRE RECEDED TO THE LEAKING TANK CAR WHERE IT BURNED BENEATH THE TANK CAR UNTIL 1:55 P.M. ON SEPTEMBER 10, 1987. DURING THE EMERGENCY, MORE THAN 200 CITY BLOCKS WERE EVACUATED AFFECTING 800 TO 1,000 RESIDENTS.

Recommendation # I-88-006

Overall Status
CUA

Priority
CLASS II

THE NTSB RECOMMENDS THAT THE RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION: DEFINE EXPLICITLY IN THE FINAL RULE OF DOCKET HM-126C THE INFORMATION THAT MUST BE PROVIDED TO CHEMTREC BEFORE A SHIPPER OF HAZARDOUS MATERIALS CAN LIST ON ITS SHIPPING DOCUMENTS THE CHEMTREC EMERGENCY TELEPHONE NUMBER IN LIEU OF ITS 24-HOUR EMERGENCY TELEPHONE NUMBER.

RSPA

CLOSED - UNACCEPTABLE ACTION

11/16/89

Recommendation Report

Wednesday, May 28, 1997

ISSUE DATE:11/1/88 - 5/31/97 ADDRESSEE:RSPA

Log Number I-0096B

Issue Date 3/23/90

COLLIER COUNTY FL

11/30/88

ABOUT 11:30 A.M., ON NOVEMBER 30, 1988, A TRACTOR-FLATBED SEMITRAILER OPERATED BY HY YIELD BROMINE COMPANY OVERTURNED AT THE INTERSECTION OF TWO FARM ROADS IN A SPARSELY POPULATED AREA OF COLLIER COUNTY, FLORIDA. THE SEMITRAILER WAS LOADED WITH 32 CYLINDERS OF A POISONOUS AND TOXIC BY INHALATION MIXTURE, 98 PERCENT METHYL BROMIDE AND 2 PERCENT CHLOROPICRIN. ELEVEN OF THE CYLINDERS WERE FULL, EACH CONTAINING ABOUT 1,500 POUNDS OF THE POISONOUS MIXTURE, AND THE REMAINDER OF THE CYLINDERS WERE PARTIALLY FULL OR EMPTY EXCEPT FOR RESIDUE. THE DRIVER HAD COMPLETED THE SECOND OF FOUR SCHEDULED STOPS WHEN THE ACCIDENT OCCURRED.

Recommendation # I-90-005

Overall Status
CAAA

Priority
CLASS II

THE NTSB RECOMMENDS THAT THE RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION: REQUIRE ALL MANUFACTURERS OF DEPARTMENT OF TRANSPORTATION (DOT) SPECIFICATION CONTAINERS THAT WERE NOT TESTED AND INSPECTED IN ACCORDANCE WITH REGULATORY REQUIREMENTS, AND ALL THAT WERE PROPERLY TESTED BUT THAT FAILED TO MEET REGULATORY REQUIREMENTS TO RETEST RANDOMLY SELECTED CONTAINERS FROM EACH LOT OF THESE IDENTIFIED CONTAINERS IN ACCORDANCE WITH DOT REGULATORY PROCEDURES; AND TO NOTIFY THE OWNERS OF CONTAINERS IN LOTS THAT FAIL THE TESTS TO REMOVE DOT SPECIFICATION MARKINGS.

RSPA

CLOSED - ACCEPTABLE ALTERNATE ACTION

7/28/95

Recommendation # I-90-006

Overall Status
CAAA

Priority
CLASS II

THE NTSB RECOMMENDS THAT THE RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION: MODIFY THE COMPLIANCE PROGRAM TO DETERMINE THAT CONTAINERS ARE REMOVED FROM USE IN TRANSPORTATION OF HAZARDOUS MATERIALS WHEN THOSE CONTAINERS ARE IDENTIFIED AS NOT MEETING SPECIFICATION REQUIREMENTS.

RSPA

CLOSED - ACCEPTABLE ALTERNATE ACTION

7/28/95

Recommendation # I-90-007

Overall Status
CAAS

Priority
CLASS II

THE NTSB RECOMMENDS THAT THE RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION: REQUIRE THAT ATTACHMENTS TO CYLINDERS BE DESIGNED TO REDUCE TO A MINIMUM THE RISK OF PUNCTURING OTHER CYLINDERS DURING TRANSPORTATION.

RSPA

CLOSED - ACCEPTABLE ACTION/SUPERSE

9/24/90

Recommendation # I-90-008

Overall Status
OUA

Priority
CLASS II

THE NTSB RECOMMENDS THAT THE RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION: REQUIRE HAZARDOUS MATERIALS CARGO TO BE SECURED IN TRANSPORTATION WITH ADEQUATE CARGO RESTRAINT SYSTEMS TO PREVENT EJECTION OF CARGO FROM VEHICLES.

RSPA

OPEN - UNACCEPTABLE ACTION

Recommendation Report

Wednesday, May 28, 1997

ISSUE DATE:1/1/88 - 5/31/97 ADDRESSEE:RSPA

Recommendation #	I-90-009	Overall Status	Priority
		OUA	CLASS II

THE NTSB RECOMMENDS THAT THE RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION: REQUIRE INDEPENDENT INSPECTIONS OF NEW AND RECONDITIONED LOW PRESSURE CYLINDERS THAT ARE CONSISTENT WITH THE PRESENT INDEPENDENT INSPECTION REQUIREMENTS FOR HIGH PRESSURE CYLINDERS.

RSPA

OPEN - UNACCEPTABLE ACTION

Recommendation #	I-90-010	Overall Status	Priority
		OUA	CLASS II

THE NTSB RECOMMENDS THAT THE RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION: AMEND INSPECTION AND TESTING REQUIREMENTS FOR PRESSURE CYLINDERS TO MAKE THE REQUIREMENTS CLEAR AND CONSISTENT.

RSPA

OPEN - UNACCEPTABLE ACTION

Recommendation #	I-90-011	Overall Status	Priority
		CUA	CLASS II

THE NTSB RECOMMENDS THAT THE RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION: DEVELOP AND IMPLEMENT REQUIREMENTS FOR IMPROVING THE VISIBILITY AND EFFECTIVENESS OF HAZARDOUS MATERIALS PLACARDS, CONSIDERING THE ORIENTATION OF VEHICLES AFTER ACCIDENTS.

RSPA

CLOSED - UNACCEPTABLE ACTION

7/28/95

Recommendation #	I-90-012	Overall Status	Priority
		CR	CLASS II

THE NTSB RECOMMENDS THAT THE RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION: REQUIRE A MEANS OF IDENTIFICATION FOR CYLINDERS AND OTHER COMPARABLE CONTAINERS TO DISTINGUISH THOSE THAT CONTAIN SIGNIFICANT QUANTITIES OF HAZARDOUS MATERIALS FROM THOSE THAT ARE EMPTY (EXCEPT FOR HAZARDOUS MATERIALS RESIDUE), WHEN IN TRANSPORTATION.

RSPA

CLOSED - RECONSIDERED

9/24/90

Recommendation Report

Wednesday, May 28, 1997

ISSUE DATE:1/1/88 - 5/31/97 ADDRESSEE:RSPA

Log Number I-0100

Issue Date 10/28/92

CALHOUN TN

12/11/90

ABOUT 9:10 A.M. ON DECEMBER 11, 1990, A TRACTOR-SEMITRAILER IN THE SOUTHBOUND LANES OF I-75 NEAR CALHOUN, TENNESSEE, STRUCK THE REAR OF ANOTHER TRACTOR-SEMITRAILER THAT HAD SLOWED BECAUSE OF FOG. THE UNINJURED TRUCKDRIVERS EXITED THEIR VEHICLES AND ATTEMPTED TO CHECK FOR DAMAGE. AFTER THE INITIAL COLLISION, AN AUTOMOBILE STRUCK THE REAR OF THE SECOND TRUCK AND WAS IN TURN STRUCK IN THE REAR BY ANOTHER TRACTOR-SEMITRAILER. FIRE ENSUED AND CONSUMED TWO TRUCKS AND THE AUTOMOBILE. MEANWHILE, IN THE NORTHBOUND LANES OF I-75, AN AUTOMOBILE STRUCK THE REAR OF ANOTHER AUTOMOBILE THAT HAD SLOWED BECAUSE OF FOG. THEN, A PICKUP TRUCK AND TWO OTHER AUTOMOBILES BECAME INVOLVED IN THE CHAIN-REACTION REAR END COLLISION. NO FATALTIES, INJURIES, OR FIRES OCCURRED. SUBSEQUENTLY, 99 VEHICLES IN THE NORTHBOUND AND SOUTHBOUND LANES WERE INVOLVED IN MULTIPLE-VEHICLE CHAIN-REACTION COLLISIONS THAT KILLED 12 PEOPLE AND INJURED 42 OTHERS.

Recommendation # I-92-001

Overall Status
OAA

Priority
CLASS II

THE NSTB RECOMMENDS THAT THE RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION: REQUIRE THAT ATTACHMENTS TO ALL U.S. DEPARTMENT OF TRANSPORTATION-AUTHORIZED HAZARDOUS MATERIALS PACKAGINGS BE DESIGNED TO MINIMIZE THE RISK OF PUNCTURING OTHER HAZARDOUS MATERIALS PACKAGINGS DURING AN ACCIDENT SITUATION.

RSPA

OPEN-ACCEPTABLE RESPONSE

Recommendation # I-92-002

Overall Status
OAA

Priority
CLASS II

THE NTSB RECOMMENDS THAT THE RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION: REVISE REQUIREMENTS FOR PRESSURE-RELIEF VENTING ON U.S. DEPARTMENT OF TRANSPORTATION SPECIFICATION 57 PORTABLE TANKS USED TO TRANSPORT DICUMYL PEROXIDE AND OTHER PRODUCTS WITH SIMILAR RAPID DECOMPOSITION CHARACTERISTICS TO ENSURE THAT THE PRESSURE-RELIEF SYSTEMS PREVENT OVERPRESSURE RUPTURE OF TANKS FROM A RAPID PRODUCT DECOMPOSITION REACTION.

RSPA

OPEN-ACCEPTABLE RESPONSE

Recommendation Report

Wednesday, May 28, 1997

ISSUE DATE:1/1/88 - 5/31/97 ADDRESSEE:RSPA

Log Number I-0101

Issue Date 11/30/93

DES MOINES IA

3/1/93

ABOUT 9:40 A.M. ON MARCH 1, 1993, A DEPARTMENT OF TRANSPORTATION (DOT) SPECIFICATION 3AA COMPRESSED GAS CYLINDER FILLED WITH 600 POUNDS OF POISONOUS ANHYDROUS HYDROGEN CHLORIDE GAS BEGAN LEAKING INSIDE A TRACTOR SEMITRAILER ON INTERSTATE 35 (I-35) NEAR DES MONIES, IOWA. THE ESCAPING GAS COMBINED WITH WATER VAPOR IN THE AIR TO FORM A WHITE VAPOR CLOUD OF HYDROCHLORIC ACID. THE INTERNAL PRESSURE IN THE CYLINDER WAS CALCULATED TO BE ABOUT 354 PSIG WHEN THE LEAK BEGAN. THE DRIVER OF THE TRACTOR SEMITRAILER PULLED THE VEHICLE ONTO THE SHOULDER OF THE HIGHWAY AFTER HE RECEIVED A CALL ON THE CB RADIO FROM A PERSON WHO OBSERVED WHITE VAPOR, INITIALLY THOUGHT TO BE SMOKE, COMING FROM INSIDE THE SEMITRAILER. THE DRIVER CALLED THE LOCAL EMERGENCY RESPONSE PHONE NUMBER. AFTER THE EMERGENCY RESPONSE PERSONNEL ARRIVED AND IDENTIFIED THE HAZARDOUS MATERIAL THAT WAS BEING CARRIED IN THE VEHICLE, THEY CLOSED A 2-MILE SECTION OF I-35 AND EVACUATED ABOUT 500 PERSONS. THERE WERE NO SERIOUS INJURIES.

Recommendation # I-93-001

Overall Status
OAA

Priority
CLASS II

THE NTSB RECOMMENDS THAT THE RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION: COORDINATE WITH THE COMPRESSED GAS ASSOCIATION, INC., IN AMENDING PAMPHLET C-6, STANDARD FOR VISUAL INSPECTION OF COMPRESSED GAS CYLINDERS, TO REQUIRE THE USE OF A THREAD GAUGE, SUCH AS AN I9 OR EQUIVALENT, TO MEASURE THE INTERIOR SECTION NECK THREADS FOR ACCEPTANCE OR REJECTION DURING PERIODIC EXAMINATION OF CYLINDERS THAT ARE USED TO TRANSPORT GASES WITH CORROSIVE PROPERTIES.

RSPA

OPEN-ACCEPTABLE RESPONSE

Recommendation # I-93-002

Overall Status
OAA

Priority
CLASS II

THE NTSB RECOMMENDS THAT THE RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION: PROHIBIT THE USE OF CYLINDERS THAT DO NOT MEET THE ACCEPTANCE CRITERIA FOR CYLINDER NECK THREADS ESTABLISHED IN CGA PAMPHLET C-6, STANDARD FOR VISUAL INSPECTION OF COMPRESSED GAS CYLINDERS.

RSPA

OPEN-ACCEPTABLE RESPONSE

Recommendation Report

Wednesday, May 28, 1987

ISSUE DATE: 1/1/88 - 5/31/87 ADDRESSEE: RSPA

Log Number R-88168

Issue Date 7/14/88

ALTOONA IA

7/38/88

ABOUT 11:44 A.M. CENTRAL DAYLIGHT SAVINGS TIME ON JULY 30, 1988, IOWA INTERSTATE RAILROAD LTD. (IIR) FREIGHT TRAINS EXTRA 470 WEST AND EXTRA 406 EAST COLLIDED HEAD ON WITHIN THE YARD LIMITS OF ALTOONA, IOWA, ABOUT 10 MILES EAST OF DES MOINES, IOWA. ALL 5 LOCOMOTIVE UNITS FROM BOTH TRAINS, 11 CARS OF EXTRA 406 EAST, AND 3 CARS, INCLUDING 2 TANK CARS CONTAINING DENATURED ALCOHOL, OF EXTRA 470 WEST DERAILED. THE DENATURED ALCOHOL, WHICH WAS RELEASED THROUGH THE PRESSURE RELIEF VALVES AND THE MANNAY DOMES OF THE TWO DERAILED TANK CARS, WAS IGNITED BY THE FIRE RESULTING FROM THE COLLISION OF THE LOCOMOTIVES. BOTH CREWMEMBERS OF EXTRA 470 WEST WERE FATALLY INJURED; THE TWO CREWMEMBERS OF EXTRA 406 EAST WERE ONLY SLIGHTLY INJURED. THE ESTIMATED DAMAGE (INCLUDING LADING) AS A RESULT OF THIS ACCIDENT EXCEEDED \$1 MILLION.

Recommendation # R-88-052

Overall Status
OUA

Priority
CLASS II

THE NTSB RECOMMENDS THAT THE RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION: ESTABLISH PROCEDURES THAT REQUIRE CARRIERS REPORTING HAZARDOUS MATERIALS INCIDENTS UNDER THE PROVISIONS OF 49 CFR 171.16 TO NOTIFY SHIPPERS WHOSE HAZARDOUS MATERIALS SHIPMENTS ARE INVOLVED.

RSPA

OPEN - UNACCEPTABLE ACTION

Recommendation # R-88-053

Overall Status
OAA

Priority
CLASS II

THE NTSB RECOMMENDS THAT THE RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION: ASSIST AND COOPERATE WITH THE FEDERAL RAILROAD ADMINISTRATION IN AMENDING 49 CFR PART 179 TO REQUIRE THAT CLOSURE FITTINGS ON HAZARDOUS MATERIALS RAIL TANKS BE DESIGNED TO MAINTAIN THEIR INTEGRITY IN ACCIDENTS THAT ARE TYPICALLY SURVIVABLE BY THE RAIL TANK.

RSPA

OPEN-ACCEPTABLE RESPONSE

Recommendation # R-88-054

Overall Status
OAA

Priority
CLASS II

THE NTSB RECOMMENDS THAT THE RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION: ASSIST AND COOPERATE WITH THE FEDERAL RAILROAD ADMINISTRATION IN AMENDING 49 CFR PART 179 TO REQUIRE THAT TANK CAR DESIGNERS AND MANUFACTURERS DETERMINE AND PROVIDE THE SPECIFICATIONS TO SECURE CLOSURE FITTINGS, SUCH AS MINIMUM TORQUE VALUES FOR SEALING BOLTED CLOSURES AND GASKET SPECIFICATIONS.

RSPA

OPEN-ACCEPTABLE RESPONSE

Recommendation Report

Wednesday, May 28, 1997

ISSUE DATE:1/1/88 - 6/31/97 ADDRESSEE:RSPA

Log Number R-0620D

Issue Date 2/12/90

HELENA MT

2/2/89

ABOUT 4:30 A.M. MOUNTAIN STANDARD TIME ON FEBRUARY 2, 1989, FREIGHT CARS FROM MONTANA RAIL LINK INC. (MRL) WESTBOUND TRAIN 1-121-28 (TRAIN 121) ROLLED EASTWARD DOWN A MOUNTAIN GRADE AND STRUCK A STOPPED HELPER LOCOMOTIVE CONSIST, HELPER 1, IN HELENA, MONTANA. THE LOCOMOTIVE CONSIST OF TRAIN 121 INCLUDED THREE HELPER UNITS (HELPER 2) AND THREE ROAD UNITS POSITIONED AT THE HEAD END OF A 49-CAR TRAIN. THE CREW MEMBERS OF TRAIN 121 HAD UNCOUPLED THE LOCOMOTIVE UNITS FROM THE TRAIN TO REARRANGE THE LOCOMOTIVE CONSIST WHILE STOPPED ON A MOUNTAIN GRADE. IN THE COLLISION AND DERAILMENT, 15 CARS FROM TRAIN 121 DERAILED, INCLUDING 3 TANK CARS CONTAINING HYDROGEN PEROXIDE, ISOPROPYL ALCOHOL, AND ACETONE. HAZARDOUS MATERIAL RELEASED IN THE ACCIDENT LATER RESULTED IN A FIRE AND EXPLOSIONS. ABOUT 3,500 RESIDENTS OF HELENA WERE EVACUATED. TWO CREWMEMBERS OF HELPER 1 WERE ONLY SLIGHTLY INJURED. THE ESTIMATED DAMAGE (INCLUDING CLEAN-UP AND LADING) AS A RESULT OF THIS ACCIDENT EXCEEDED \$6 MILLION.

Recommendation # R-89-083

Overall Status
OUA

Priority
CLASS II

THE NTSB RECOMMENDS THAT THE RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION: DEVELOP PROCEDURES TO UPDATE AND CORRECT, IN A TIME MANNER, ERRORS IN THE EMERGENCY RESPONSE GUIDE BOOK.

RSPA

OPEN - UNACCEPTABLE ACTION

Recommendation Report

Wednesday, May 28, 1997

ISSUE DATE:1/1/88 - 5/31/97 ADDRESSEE:RSPA

Log Number R-0627

Issue Date 7/1/91

THE SAFETY BOARD HAS HAD A LONG-STANDING CONCERN ABOUT EMERGENCY RESPONSE MANAGEMENT OF RAILROAD ACCIDENTS INVOLVING HAZARDOUS MATERIALS AND THE HAZARDOUS MATERIALS TRAINING OF RAILROAD PERSONNEL. BETWEEN 1977 AND 1987, THE SAFETY BOARD INVESTIGATED SEVERAL RAILROAD ACCIDENTS AND INCIDENTS INVOLVING HAZARDOUS MATERIALS IN WHICH THE LACK OF ADEQUATE WRITTEN EMERGENCY RESPONSE PLANS AND THE LACK OF PRACTICE WITH THE EMERGENCY RESPONSE PROCEDURES BETWEEN THE RAILROADS AND THE COMMUNITY PRESENTED MAJOR SAFETY PROBLEMS. IN THESE ACCIDENTS/INCIDENTS, THE LACK OF PLANNING (A) HINDERED EFFORTS MADE BY COMMUNITY RESPONSE PERSONNEL TO HANDLE THE EMERGENCY AND TO MINIMIZE THE RISK TO THE PUBLIC, (B) INCREASED THE SEVERITY OF THE DAMAGE OR CONSEQUENCES RESULTING FROM THE ACCIDENT, AND/OR (C) LENGTHENED THE DURATION OF THE EVACUATION PERIOD AND DISRUPTION TO BUSINESSES. AS A RESULT OF ITS INVESTIGATIONS, THE BOARD ISSUED SAFETY RECOMMENDATIONS TO VARIOUS AGENCIES, ORGANIZATIONS, AND RAILROADS TO IMPROVE THE SAFETY OF THE TRANSPORT OF HAZARDOUS MATERIALS BY RAIL.

Recommendation # R-91-011

Overall Status
CNLA

Priority
CLASS II

THE NTSB RECOMMENDS THAT THE RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION: ESTABLISH A WORKING GROUP, WITH THE ASSISTANCE OF THE FEDERAL RAILROAD ADMINISTRATION, THE ASSOCIATION OF AMERICAN RAILROADS, THE CHEMICAL MANUFACTURERS ASSOCIATION, THE AMERICAN PETROLEUM INSTITUTE, AND THE NATIONAL FIRE PROTECTION ASSOCIATION, TO EXPEDITIOUSLY IMPROVE THE PACKAGING OF THE MORE DANGEROUS PRODUCTS (SUCH AS THOSE THAT ARE HIGHLY FLAMMABLE OR TOXIC, OR POSE A THREAT TO HEALTH THROUGH CONTAMINATION OF THE ENVIRONMENT) BY (A) DEVELOPING A LIST OF HAZARDOUS MATERIALS THAT SHOULD BE TRANSPORTED ONLY IN PRESSURE TANK CARS WITH HEAD SHIELD PROTECTION AND THERMAL PROTECTION (IF NEEDED); AND (B) ESTABLISHING A WORKING AGREEMENT TO SHIP THE LIST HAZARDOUS MATERIALS IN SUCH TANK CARS.

RSPA

CLOSED - NO LONGER APPLICABLE

6/28/94

Recommendation Report

Wednesday, May 28, 1997

ISSUE DATE:1/1/88 - 5/31/97 ADDRESSEE:RSPA

Log Number R-0640A

Issue Date 12/31/92

THE NATIONAL TRANSPORTATION SAFETY BOARD CONDUCTED A SPECIAL INVESTIGATION ON THE INSPECTION AND TESTING OF RAILROAD TANK CARS IN RESPONSE TO TWO ACCIDENTS IN WHICH HAZARDOUS MATERIALS WERE RELEASED BECAUSE OF A STRUCTURAL FAILURE OF THE TANK CARS. THE FIRST ACCIDENT OCCURRED ON JANUARY 18, 1992, WHEN THREE TANK CARS IN A NORFOLK SOUTHERN CORPORATION FREIGHT TRAIN DERAILED NEAR DRAGON, MISSISSIPPI. THE DERAILED TANK CARS (UTLX 89170, CONX 9101, AND CHVX 180130) EACH CONTAINED MORE THAN 30,000 GALLONS OF LIQUEFIED PROPANE, WHICH IS REGULATED AS A FLAMMABLE GAS BY THE U.S. DEPARTMENT OF TRANSPORTATION (DOT). THE A-END OF CONX 9101 FRACTURED AND SEPARATED ALONG A CIRCUMFERENTIAL WELD WHERE THE TRANSITION SECTION IS JOINED TO THE LARGE DIAMETER CYLINDER OF THE TANK, RESULTING IN THE DERAILMENT OF CONX 9101 AND THE TANK CARS COUPLED TO EACH END OF CONX 9101. THE SEPARATION RESULTED IN THE RELEASE AND IGNITION OF THE ENTIRE LOAD OF PROPANE. METALLURGICAL EXAMINATION SHOWED THAT THE DISCOLORED AREA OF THE FRACTURE SURFACE WAS EXTENSIVELY OXIDIZED, WHICH IS INDICATIVE OF LONG-TERM EXPOSURE TO A CORROSIVE MEDIUM AND THE PRESENCE OF A PREEXISTING CRACK. A SECOND ACCIDENT OCCURRED ON MARCH 25, 1992, IN KETTLE FALLS, WASHINGTON, AND INVOLVED A DOT SPECIFICATION 111A100W2 TANK CAR THAT CONTAINED ABOUT 13,000 GALLONS OF SULFURIC ACID. THIS TANK CAR WAS BUILT AND OPERATED BY THE UNION TANK CAR COMPANY (UNION). THE TANK CAR CRACKED AT THE BOTTOM CENTER OF THE TANK ALONG A CIRCUMFERENTIAL WELD, RESULTING IN THE RELEASE OF ALL OF THE SULFURIC ACID. THERE WAS METALLURGICAL EVIDENCE OF A PREEXISTING CRACK IN THE AREA OF THE FAILURE.

Recommendation # R-92-023

Overall Status
OAA

Priority
CLASS II

THE NTSB RECOMMENDS THAT THE RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION: DEVELOP AND PROMULGATE, WITH THE FEDERAL RAILROAD ADMINISTRATION, REQUIREMENTS FOR THE PERIODIC TESTING AND INSPECTION OF RAIL TANK CARS THAT HELP TO ENSURE THE DETECTION OF CRACKS BEFORE THEY PROPAGATE TO CRITICAL LENGTH BY ESTABLISHING INSPECTION INTERVALS THAT ARE BASED ON THE DEFECT SIZE DETECTABLE BY THE INSPECTION METHOD USED, THE STRESS LEVEL, AND THE CRACK PROPAGATION CHARACTERISTICS OF THE STRUCTURAL COMPONENT (REQUIREMENT BASED ON A DAMAGE-TOLERANCE APPROACH).

RSPA

OPEN-ACCEPTABLE RESPONSE

Recommendation Report

Wednesday, May 28, 1997

ISSUE DATE: 1/1/88 - 5/31/97 ADDRESSEE: RSPA

Log Number R-0650A

Issue Date 3/2/95

CHATTANOOGA TN

6/6/94

ON 6/6/94, A CONDUCTOR FOR THE NORFOLK SOUTHERN RAILWAY COMPANY DETECTED PRODUCT LEAKING FROM THE BOTTOM OF TANK CAR UTLX 79211 IN THE NORFOLK SOUTHERN HARRY DEBUTTS YARD IN CHATTANOOGA, TENNESSEE. THE TANK CAR CONTAINED 12,184 GALLONS OF A 75-PERCENT CONCENTRATION OF ARSENIC ACID, WHICH IS CLASSIFIED AS A POISONOUS MATERIAL & ALSO DESIGNATED AS A MARINE POLLUTANT UNDER THE DEPARTMENT OF TRANSPORTATION HAZARDOUS MATERIALS REGULATIONS.

Recommendation # R-95-011

Overall Status
CAA

Priority
CLASS II

THE NTSB RECOMMENDS THAT THE RSPA: REQUIRE, IN COOPERATION WITH THE FRA, THAT THE SHIPPER OR PARTY USING A TANK CAR TO TRANSPORT MATERIALS CORROSIVE TO THE TANK DETERMINE THE PERIODIC INSPECTION INTERVAL & TESTING TECHNIQUE FOR LININGS AND COATINGS, AND REQUIRE THAT THIS INFO BE PROVIDED TO PARTIES RESPONSIBLE FOR THE INSPECTION AND TESTING OF TANK CARS.

RSPA

CLOSED - ACCEPTABLE

2/10/97

Question 2. Mr. Chipkevich, your testimony lists four areas where the Safety Board believe additional action should be taken to enhance the safe transportation of hazardous materials including improving railroad tank cars. When I was at the Board I supported railroad tank car improvements and I want to make sure that the NTSB recommendations in this area are being taken seriously.

Question 2a. Is RSPA actively addressing Safety Board recommendations to improve railroad tank cars? Also, do you have any idea as to the railroad tank car population that are affected by your recommendations?

Answer. The Federal Railroad Administration (FRA) has been working with RSPA to address several safety recommendations in this area. Improvements have included headshield protection requirements for all flammable gas cars, discontinuance of use of tank cars with bottom manways, and completion of a risk assessment program resulting in requirements for the most dangerous materials to be transported in the tank cars that perform best in accidents. Following several tank car failures, the Safety Board has called for improved testing requirements to determine tank car integrity and has been pleased that the FRA agrees with the Board's recommendation. The FRA has taken action to require the use of non-destructive testing techniques and is working toward a damage tolerance requirement. When implemented, a damage tolerance approach would match non-destructive test capabilities with appropriate frequency to detect defects before they reach critical size.

The population of the nation's railroad tank cars numbers about 275,000. The Safety Board does not have data on the number of tank cars affected by our recommendations.

Question 2b. What has [been] RSPA's acceptance rate for NTSB hazardous materials safety recommendations for the past several years? You can provide that for the record if necessary?

Answer. For safety recommendations issued between January 1988 and May 1997, 34 safety recommendations were issued to RSPA. RSPA's acceptance rate is 71.88 percent.

Question 3. The Safety Board has also been thoroughly involved in improving the crashworthiness of cargo tanks used on the highways.

Question 3a. On page 4 of your testimony, you indicate that RSPA and FHWA have been working on improving the performance [of] bulk liquid cargo tanks since 1992. Would you briefly discuss the Safety Board's recommendations in this area?

Answer. On February 4, 1992, the Safety Board adopted a special investigation report on rollover protection devices on highway cargo tank vehicles. The rollover protection devices are intended to protect fittings and valves on the top of the cargo tank from damage in rollover accidents. As a result of its investigation the Safety Board concluded that the regulatory performance standards for rollover protection devices on bulk liquid cargo tanks may not be sufficient to prevent structural failure during a rollover accident. Consequently, the Safety Board recommended that the RSPA and FHWA jointly improve the performance of the rollover protection devices by (1) modeling and analyzing the forces that can act upon rollover protection devices during a rollover accident, (2) issue performance standards for rollover protection devices that are based on engineering modeling and analysis, and (3) phaseout from hazardous materials service the use of all cargo tanks that fail to meet the new performance standards.

Question 3b. Is there any reason to believe that the 5-year-old recommendations are any nearer to being implemented to the NTSB's satisfaction within the next year or two?

Answer. The Safety Board does not have any information from RSPA or the FHWA to indicate these recommendations will be implemented within the next 2 years.

VALUJET ACCIDENT

Question 4. On May 11, 1996, a ValuJet aircraft crashed shortly after takeoff into the Florida Everglades Swamp. Both pilots, three flight attendants, and all 105 passengers were killed. Before the accident, the flightcrew reported to Air Traffic Control that it was experiencing smoke in the cabin and cockpit. Twenty days after the accident, the National Transportation Safety Board (NTSB) issued a series of urgent recommendations to the FAA and RSPA dealing with the transport of certain hazardous materials (oxidants) on aircraft.

Question 4a. Is the NTSB satisfied with RSPA's response to the ValuJet recommendations?

Answer. The Safety Board issued two urgent recommendations to the RSPA following the crash of ValuJet flight 592 in the Everglades near Miami, Florida, on May 11, 1996.

Safety Recommendation A-96-29 asked that the RSPA, in cooperation with the FAA, permanently prohibit the transportation of chemical oxygen generators as cargo on board any passenger or cargo aircraft when the generators have passed their expiration dates and the chemical core has not been depleted. RSPA published a final rule on December 30, 1996, that permanently prohibited all chemical oxygen generators as cargo in passenger-carrying aircraft; however, this prohibition does not apply to cargo aircraft. The Safety Board believes this prohibition should also apply to cargo aircraft. We are not aware of any planned regulatory action to ban these generators on cargo aircraft.

Safety Recommendation A-96-30 asked that RSPA, in cooperation with the FAA, prohibit the transportation of oxidizers and oxidizing materials (e.g., nitric acid) in cargo compartments that do not have fire or smoke detection systems. On December 30, 1996, RSPA issued a notice of proposed rulemaking (NPRM) to prohibit the transportation of oxidizers in class D compartments in passenger-carrying aircraft and cargo aircraft. The Board believes the NPRM is responsive to the recommendation and has provided its comments to RSPA. The Safety Board will continue to monitor RSPA's progress in publishing final rules that address the recommendation.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ERNEST F. HOLLINGS TO
ROBERT CHIPKEVICH

Question 1. In the wake of the ValuJet crash, NTSB recommended, and RSPA concurred in banning all oxygen generators from being shipped as cargo on any passenger carrying aircraft. Are there any similar steps that could be taken to reduce the risk of this kind of tragedy?

Answer. There are steps that should be taken to reduce the risk of this kind of tragedy. The FAA should be urged to require fire/smoke detection and fire extinguishment systems for all class D cargo compartments.

On August 8, 1984, the FAA issued a notice of proposed rulemaking, Notice 84-11, that addressed the problem of fire containment in cargo compartments by specifying a new test method for determining flame penetration resistance of compartment liners. When the Board provided comments on the rulemaking on October 9, 1984, it advised the FAA that while proposed flame penetration tests were more stringent than previous ones, a fire should not be allowed to persist in any State of intensity in an airplane without the knowledge of the flightcrew, and that a fire detection system should be required in class D cargo compartments. On May 16, 1986, the FAA issued a final rule to amend fire safety standards for cargo or baggage compartments. The final rule adopted more stringent cargo liner burn-through tests and smaller class D cargo compartments, but rejected a requirement for fire detection systems in class D cargo compartments.

After a February 3, 1988, in-flight fire on board American Airlines flight 132, a DC-9-83, while en route to Nashville, Tennessee from Dallas/Fort Worth, Texas, the Safety Board stated that because the cargo compartment was not equipped with fire or smoke detection systems, the cockpit crew had no way of detecting the threat to the safety of the aircraft until smoke and fumes reached the passenger cabin. After the smoke was detected in the passenger cabin, the cockpit crew had no means to identify the location of the fire. Furthermore, because the cargo compartment was not equipped with a fire extinguishment system, the cockpit crew had no means available to extinguish or suppress the fire in the cargo compartment.

As a result of the accident on American Airlines 132, the Safety Board on October 24, 1988, urged the FAA to:

Require fire/smoke detection systems for all class D cargo compartments. (A-88-122)

Require a fire extinguishment system for all class D cargo compartments. (A-88-123)

On August 10, 1993, the FAA responded to Safety Recommendation A-88-122 by stating that it did not believe that fire/smoke detection and fire extinguishment systems would provide a significant degree of protection to occupants of airplanes and that it had terminated its rulemaking action to require such systems. On October 14, 1993, Safety Recommendations A-88-122 and -123 were classified "Closed-Unacceptable Action." In its letter, the Board expressed concern about yet another in-flight fire in a class D cargo compartment that went undetected by the flight crew. This fire occurred on February 1, 1991, aboard a USAir DC-9 aircraft while enroute to Greenville, North Carolina from Charlotte, North Carolina. The fire went undetected until after the plane landed in Greenville.

Again, on May 11, 1996, the cargo compartment where a fire likely occurred on board ValuJet flight 592 was a class D cargo compartment and was not equipped

with fire or smoke detection systems. As a result, on May 8, 1997, the Board placed the Safety Recommendations A-88-22 and -23, urging the FAA to require fire/smoke detection and fire extinguishment systems for all class D cargo compartments, on their "Most Wanted" list of safety recommendations.

Question 2. Should RSPA review the types and quantities of materials that may be shipped on aircraft with an eye toward reducing the number of such materials?

Answer. A review of matter is currently being proposed by RSPA, and the Safety Board is supporting this proposal. The Safety Board issued a recommendation in 1988 urging the FAA to consider the effects of authorized hazardous materials cargo in fires for all types of cargo compartments, and to require appropriate safety systems to protect the aircraft and occupants supporting.

In that recommendation we noted that the FAA's May 16, 1986, final rule on cargo compartment fire protection research and testing did not consider what effect hazardous materials involvement in a cargo fire could have on the capability of a cargo compartment to contain an in-flight fire. The FAA had concluded that the effects of hazardous materials were beyond the scope of its rulemaking notice. However, as a result of the in-flight fire aboard flight 132, the Safety Board noted that hazardous materials involvement in a cargo compartment fire must be considered in all cargo compartment fire penetration safety standards, and that hazardous materials that the FAA determines present unacceptable threats should be prohibited.

Also as a result of the accident on American Airlines 132, the Safety Board on October 24, 1988, urged the FAA to:

Consider the effects of authorized hazardous materials cargo in fires for all types of cargo compartments, and require appropriate safety systems to protect the aircraft and occupants. (A-88-127)

On March 17, 1994, after no response to a final follow-up letter to the FAA, Safety Recommendation A-88-127 was classified "Closed-Unacceptable Action."

On May 31, 1996, as a result of the accident involving ValuJet flight 592, the Board made recommendations to the FAA and RSPA urging them to cooperate to:

... prohibit the transportation of oxidizers and oxidizing materials (e.g., nitric acid) in cargo compartments that do not have fire or smoke detection systems. (A-96-28 (FAA) and -30 (RSPA))

On December 30, 1996, RSPA issued a notice of proposed rulemaking (NPRM) that proposes prohibiting the carriage of oxidizers, including compressed oxygen, in passenger carrying aircraft and in class D compartments of cargo aircraft. Safety Recommendations A-96-28 and 30 was classified "Open—Acceptable Response." The NPRM further proposes initiating a study to assess the risks associated with the transportation of hazardous materials, other than oxidizers, in aircraft cargo compartments. This proposed study will address the Board's Safety Recommendation A-88-127 which was closed as unacceptable action in 1994. (This urged the FAA to consider the effects of authorized hazardous materials cargo in fires for all types of cargo compartments, and require appropriate safety systems to protect the aircraft and occupants.)

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. INOUE TO ROBERT CHIPKEVICH

Question. Do you have any opinion as to whether RSPA requires additional preemptive authority in light of the D.C. Cir. case, *Massachusetts v. DOT*?

Answer. In the past, the Safety Board has supported safety requirements for transporting hazardous materials intrastate at an equivalent safety level as required for transporting those materials interstate.

Knowing of large volumes of products and gases transported annually through pipelines and of the few pipeline related fatalities and injuries each year, one intuitively perceives that pipeline transportation must be one of the safest means of transporting hazardous materials. However, documentation of this intuition continues to be out of reach as the information needed to make such comparisons is not collected either individually or collectively by government or by industry.

In 1969, the Safety Board recommended to the U.S. Department of Transportation that it needed to develop a uniform, cross-modal incident/accident reporting form appropriate for automatic data processing purposes. In 1971, the Safety Board looked specifically at the need to have comparable accident data on various surface mode transportation systems when considering the development of government policies and programs that affect freight transportation. In that report the Safety Board recommended that the U.S. Department of Transportation develop and publish, on a regular basis, comparable data on the losses and loss rates associated with all

modes of freight transportation. This data should include losses in all forms: death, injury, property damage, and delays due to accidents.

The Safety Board, in a report in which it attempted to use existing data to compare the safety experience of several liquid pipeline operators, used statistical data collected by both the U.S. Department of Transportation and the U.S. Department of Energy. We concluded that the data available was insufficient to perform an effective accident trend analysis or to properly evaluate operator performance. Because there is no effective means for comparing the safety performance among pipeline operators, the Safety Board recommended that the Research and Special Programs Administration of the DOT:

P-96-1

Develop within 1 year and implement within 2 years a comprehensive plan for the collection and use of gas and hazardous liquid pipeline accident data that details the type and extent of data to be collected, to provide the Research and Special Programs Administration with the capability to perform methodologically sound accident trend analyses and evaluations of pipeline operator performance using normalized accident data.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. KAY BAILEY HUTCHISON TO
CLIFFORD J. HARVISON

Question 1. In your testimony, you note that you support the Alliance concept, but you believe that some safeguards are needed for carriers. What type of safeguards would you recommend?

Answer. Under the "Alliance" concept, which has been forwarded to the Secretary of Transportation for publication as rulemaking (as mandated by HMTUSA), the program would embrace reciprocity (among participating states) in terms of motor carrier registration and permitting. As such, all a motor carrier need do is register (or apply for a permit) in its "base state" and that state's subsequent action would be binding on all other participating states. In the vernacular of the trucking industry, this is often referred to as "one stop shopping" for registration and permits.

Obviously, the same mechanics of reciprocity would apply in the event that the "base state" denied, revoked or suspended the application for registration or a permit. Such action would (effectively) put a trucking company out of business.

NTTC is concerned that a single highly publicized accident (or a series of otherwise unrelated incidents) in a particular jurisdiction might trigger political pressures aimed at denying, revoking or suspending a carrier's registration or permit. At the same time, we honor the fact that a carrier, who repeatedly or wantonly disregards safety regulations should not be permitted to operate on the nation's public highways.

Therefore, we believe that—prior to any denial, suspension or revocation of a carrier's registration or permit—that the acting jurisdiction must be required to complete an administrative and/or judicial process (i.e. investigations, hearings, etc. together with an avenue of appeal) prior to taking final action.

I am pleased to report that, since my testimony, the leadership of the "Alliance" has agreed to the validity of my concerns, and has amended suggested statutory language which would "cure" the problem. I have been advised that this revised language will be forwarded to the Committee under the auspices of "Interested Parties For HMTA Reauthorization" group.

Question 2. You also mentioned the need for a definition of "shipper" in the law. Do you have a specific definition? Have you discussed your proposal with the National Industrial Transportation League or others who represent shippers?

Answer. The definition, proposed by NTTC, is as follows:

(XXX) "Shipper" (or "offerer") means, for the purposes of this Act, a person who owns and/or operates a facility where hazardous materials are loaded into packagings authorized by the Secretary and/or transportation equipment for the purposes of transportation."

While I have not contacted the National Industrial Transportation League, I have discussed this matter with a number of shipper-oriented associations representing those involved in hazardous materials transportation (most notably the "Hazardous Materials Advisory Council (HMAC)).

As I noted in my prepared testimony, today's transportation transactions can be quite complex (involving various "third parties" such as brokers, service agents, freight consolidators and third-party logistics specialists). One fundamental purpose of offering our proposal is to enable the Department of Transportation's Research & Special Programs Administration (which writes "hazmat" regulations) and the

DOT's Federal Highway Administration (which enforces "hazmat" regulations) to better target their training and compliance activities.

Question 3. What, in your view, is the most important policy action Congress should take in the hazardous materials reauthorization legislation?

Answer. In NTTC's opinion, Congress' top priority in this legislation should be to strengthen and amplify its belief (originally stated in the 1990 version of HMTUSA) that national uniformity in hazardous materials legislation best serves the interests of safety in the highway transportation of hazardous materials. In this context, the Congress should: (a) assure that the Secretary of Transportation has fundamental and overriding jurisdiction in promulgating "hazmat" regulations (including primacy over other Federal agencies); and, (b) reinstitute the full force and authority of the "obstacle test" as a tool for DOT's use in considering applications for preemption.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ERNEST F. HOLLINGS TO
CLIFFORD J. HARVISON

Question 1. I You are concerned that the D.C. Circuit's decision in *Massachusetts v. DOT* has left RSPA's "undermined". Could you provide some concrete examples of the harm this decision could do to RSPA's enforcement efforts?

Answer. In 1990, the Congress stressed the safety benefits of "national uniformity" in hazardous materials regulation. In recognition of the fact that many State and local "hazmat" laws and regulations would remain "on the books", the Congress authorized the Secretary, DOT to preempt such non Federal restrictions utilizing either the "dual compliance test" or "the obstacle test".

While administrative (or judicial) review of a non Federal law or regulation under the dual compliance test is relatively straightforward, such is not the case with respect to the obstacle test.

At the time of the 1990 codification of HMTUSA, the hearing record demonstrates that one of the prime reasons the Congress included "preemption" in the statute was concern over (what is often referred to as) the "not in my backyard" syndrome. Specifically, the Congress recognized that the transportation of hazardous materials is essential to our economy, yet that transportation imposed special burdens and risks on communities through which hazardous materials are transported. The record had already documented the fact that some jurisdictions had attempted to impose (by statute or regulation) operational restrictions so onerous as to cause transporters to seek alternative routings to avoid such jurisdictions (note: In earlier DOT "Inconsistency Rulings", DOT referred to this issue as "... exporting risk"). Since it would be impossible to predict the wide range of regulatory and statutory variations which might be used by non Federal jurisdictions, the Congress gave the Secretary the discretion of the obstacle test as one way to blunt the "exportation of risk".

Massachusetts v. DOT is a case in point, and I will use the questions raised, therein, to demonstrate the requested "concrete example".

The State of Massachusetts had imposed a \$10,000 bonding requirement for all motor carriers loading or unloading hazardous wastes within that State. This was done despite (and in addition to) the fact that current Federal regulation would require a tank truck carrier of hazardous wastes to possess "evidence of financial responsibility" in the amount of \$5 million (see 49 CFR, Part 387).

Now, for the sake of a "concrete example" allow one to assume that the neighboring State of New Hampshire decides that they want to further protect their citizens against the problems of hazardous waste transportation, and that legislature imposes a bonding requirement of \$1 million (again, in addition to the current Federal requirements) knowing full well that such action would prompt an extraordinary expense for a motor carrier of any size and would probably cause reroutings into adjacent states. Alternatively (or coincidentally) let us assume that the city of Boston, MA decides to play "one upmanship" with the Massachusetts legislature and sets a \$500,000 bonding requirements for transportation within that City.

While (herein), we have used "bonding" as the example, please be assured that the operational restrictions that could be imposed are virtually unlimited in number.

Question 2. How would you define "shipper" in the HMTSRA (sic) and what are the advantages of such a definition?

Answer. The definition, proposed by NTTC, is as follows:

(XXX) "Shipper" (or "offerer") means, for the purposes of this Act, a person who owns and/or operates a facility where hazardous materials are loaded into packaging authorized by the Secretary and/or transportation equipment for the purposes of transportation."

While I have not contacted the National Industrial Transportation League, I have discussed this matter with a number of shipper-oriented associations representing those involved in hazardous materials transportation (most notably the Hazardous Materials Advisory Council (HMAC)).

As I noted in my prepared testimony, today's transportation transactions can be quite complex (involving various "third parties" such as brokers, service agents, freight consolidators and third-party logistics specialists). One fundamental purpose of offering our proposal is to enable the Department of Transportation's Research & Special Programs Administration (which writes "hazmat" regulations) and the DOT's Federal Highway Administration (which enforces "hazmat" regulations) to better target their training and compliance activities.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. INOUE TO
CLIFFORD J. HARVISON

Question. Do you agree that the elimination of 49 U.S.C. 5106 is harmful to RSPA's authority?

Answer. Yes. As presently codified, this provision of the Hazardous Materials Transportation Uniform Safety Act (HMTUSA) serves to clarify Congressional intent that the Secretary of Transportation has comprehensive authority to regulate those activities of "hazmat employers" and "hazmat employees" which might be considered *incidental* to transportation.

For instance, there is no doubt that DOT's hazmat rules would apply to a driver of a cargo tank laden with hazardous materials—while driving. However, there might be some doubt as to the applicability of the Secretary's regulations to that individual while he/she is engaged in other related activities (such as loading, unloading, operation of accessory equipment, etc.). Such activities may present unique hazards (for instance, the driver might become exposed to the product in the event of a broken hose). Section 5106 serves to specify that the Secretary has primary regulatory jurisdiction in such areas. Section 5106 should be strengthened, not eliminated.

PREPARED STATEMENT OF THE ASSOCIATION OF AMERICAN RAILROADS

The Association of American Railroads (AAR) appreciates this opportunity to submit comments for the hearing record in connection with the reauthorization of the nation's hazardous materials transportation program.¹ AAR's testimony will address three areas: the railroads' excellent safety record; rail industry efforts to make rail transportation of hazardous materials even safer in the future; and the Administration's proposed revisions to the hazardous materials laws.

SUMMARY

The railroad industry's safety record in general—and its hazardous materials transportation safety record in particular—are excellent. Some 99.997 percent of all hazardous materials shipments by rail reach their final destination without a release due to an accident.

AAR supports the hazardous materials reauthorization proposal which the Department of Transportation (DOT) sent to Congress on April 17. However, AAR has concerns about other aspects of the administration's "Surface Transportation Safety Act," including provisions addressing underground damage prevention, railroad accident reporting, and sanitary food transportation. AAR plans to address these concerns in separate comments.

THE RAILROADS' SAFETY RECORD

Recent years have shown a significant improvement in virtually every category of rail safety statistics. The Federal Railroad Administration (FRA) said in a recent report to Congress that the rail industry has made great strides in safety over the past two decades. FRA noted that deferred maintenance on main lines and equipment is now rare, that railroad purchases of new locomotives and freight cars incorporate significantly improved materials and technology, and that advances in track and other components permit railroads to move people and goods with a high degree of safety.

¹AAR is a trade association whose members account for 77 percent of total line-haul mileage, produce 93 percent of total freight revenues, and employ 91 percent of the freight railway workforce.

While never satisfied, railroads are very pleased by the safety improvements they have realized. The train accident rate has fallen by 25 percent since 1990 and by 69 percent since 1980. Employee lost workday injury and illness rates are down 54 percent since 1990. In addition, Federal data show that railroad employees suffer fewer workplace injuries and illnesses than employees in other modes of transportation and in American industry generally. Further, grade crossing accident, injury, and fatality rates have declined by more than 50 percent since 1980.

The railroads' efforts to improve safety in the handling of hazardous materials have also borne fruit, with only three fatalities subsequent to 1980. The volume of hazardous materials moving by rail increased more than 22 percent since 1990, with more than 1.7 million carloads being moved in 1995. Yet, the number of accidents in 1995 resulting in releases of hazardous materials was only 27, down 23 percent from the 1990 figure. Further, the number of hazardous materials incidents per thousand carloads—unintentional releases of hazardous materials of which the vast majority are minor leaks from valves and fittings—has declined more than 25 percent since 1990.

Critical to the industry's safety record is the significant private capital investment made in the rail network since 1980, when Congress enacted the Staggers Rail Act and helped restore the industry's financial viability. In fact, railroads have invested approximately \$90 billion to maintain and improve their track and equipment since 1990.

EMPHASIS ON SELF-REGULATION

An additional key factor in safety performance is the industry's emphasis on self-regulation. Railroads set standards on an industry-wide basis through AAR committees, and routinely identify safety problems and address them without waiting for regulatory intervention.

Standard setting requires research into state-of-the-art technology. For example, data in the 1980's made it clear that derailments caused by broken wheels presented an industry-wide problem. AAR's members assembled the facts and took action under the industry's Interchange Rules—governing the movement of cars among different railroads—to stop the purchase of straight plate wheels and accelerate the use of heat-treated curve plate wheels. The derailment rate dropped 60 percent over the next 7 years.

THE ROLE OF TECHNOLOGY

The primary method of detecting defective bearings is currently by "hot box" detectors which use infrared sensing technology. They are strategically located around the rail network, often at 10–25 mile intervals. These detectors have been instrumental in reducing derailments due to bearing failures.

Some bearing detectors now in service use acoustics to detect patterns of sound emissions generated by the rolling elements within each bearing. Recent work at AAR's Transportation Technology Center suggests that, with new technology involving acoustics and advanced pattern recognition techniques, there is potential for more advanced systems to produce even more reliable detection performance.

Continuous improvements have also resulted in more durable and stronger track and infrastructure components and systems. Track today is longer lasting due to improved steel rail, and improved inspection techniques, using various computer-enhanced sensor systems, provide for early detection of potential problems.

Advanced technology has also played a significant role in improving the performance of railroad tank cars in accidents. The Tank Car Safety Research Project, on which AAR and the Railway Progress Institute have spent more than \$10 million to date, was responsible for the development and testing of shelf couplers, head shields, and thermal insulation on tank cars.

NON-ACCIDENT RELEASES AND VENT SURGE SUPPRESSION

AAR participates in two programs designed to address the problem of "non-accident releases" of hazardous materials, which are leaks and splashes from tank cars.

The leading cause of such releases is leaks from tank car safety vents. Tank car safety vents are necessary to release pressures from product expansion. Moreover, the movement of tank cars can cause momentary pressure spikes to be exerted on the vents that sometimes result in an accidental release even though there is no danger of a tank rupture. AAR, the Federal Railroad Administration, the Chlorine Institute, and the Railway Progress Institute are researching the effectiveness of surge suppression systems designed to reduce the pressure spikes exerted on the vents during normal transportation, and thereby the occurrence of safety vent leaks.

In 1995, the railroads, chemical shippers, tank car builders, and government agencies took a further step by instituting the North American Non-Accident Release Program. The program identifies shippers whose releases from tank cars exceed an established threshold number over an 18-month period. Shippers so identified are asked to implement specific corrective measures. The program is based on a similar Canadian program that achieved a 32 percent reduction in releases over a 2-year period.

OPERATION RESPOND

In November 1992, Houston-area railroads, the Federal Railroad Administration, and representatives of most fire and police agencies in Harris County, Texas instituted a pilot hazardous materials program known as Operation Respond. Operation Respond was intended as a research and demonstration project to improve information available to first responders at the scene of a hazardous materials incident. As a result of the program's success, Operation Respond in 1995 became a non-profit institute as a means to conduct further research and development.

A critical feature of Operation Respond is a computer link connecting 911 or fire and police dispatch centers to a participating transportation carrier data base containing information about a rail car's contents and instructions for handling them. Other services of the project include development of manuals and related first response protocols for emergency workers. The goal of Operation Respond is to develop a software system that is easy to use and inexpensive for police and fire departments to maintain for purposes of providing accurate and timely data to first responders. A component of its goals is to develop and improve training programs for first responders dealing with railroad and motor carrier accidents.

TRANSCAER

AAR, the Chemical Manufacturers Association, and other chemical and transportation and trade associations are participating in a program called "TRANSCAER," Transportation and Community Awareness and Emergency Response. TRANSCAER is a national community outreach program designed to improve community emergency planning and emergency response capabilities. TRANSCAER participants help local emergency planning committees learn about hazardous materials transported through their communities, assist the committees in developing emergency response plans, and aid local entities in their preparations for responding to hazardous materials incidents. The TRANSCAER participants also hope to make communities aware of industry safety programs. It is the intention of the TRANSCAER participants to focus their efforts on communities located along major routes, although assistance will be provided to any community that wants to take advantage of the program.

OTHER INDUSTRY INITIATIVES

The railroad industry has numerous other safety programs addressing the transportation of hazardous materials by rail. Individual railroads and AAR annually conduct free emergency response training sessions for thousands of State and local fire fighters, police, and other emergency response personnel. AAR offers hazardous materials training classes at its Transportation Technology Center (TTC) in Pueblo, Colorado. Classes are offered on tank car safety, emergency responses to highway incidents, emergency response for first responders, and emergency response for hazardous materials teams. Thousands of students from fire departments, State and local agencies, railroads, and chemical companies have attended TTC's training program.

AAR's Bureau of Explosives publishes one of the most widely-used publications on hazardous materials emergency response, *Emergency Handling of Hazardous Materials in Surface Transportation*, which contains initial response information for all hazardous materials in the Department of Transportation's Hazardous Materials Table. Another valuable publication is a set of "Emergency Action Guides," which contain specific information on methods of responding to releases. In addition, AAR employs a force of 13 professionals whose job it is to inspect railroad and chemical shipper facilities to ensure that those facilities are complying with hazardous materials requirements. These professionals are on-call 24 hours per day to respond to railroad hazardous materials emergencies.

AAR POSITION ON ADMINISTRATION BILL

AAR supports the hazardous materials reauthorization proposal which the Department of Transportation sent to Congress on April 17. The legislation would extend the authorization for hazardous materials programs through fiscal year 2003.

The one modification proposed by DOT of importance to the railroads is the deletion of 49 USC §5106. Generally, section 4(b)(1) of the Occupational Safety and Health Act provides that OSHA does not have jurisdiction in an area regulated by another Federal agency. However, confusion created by certain hazardous materials training requirements contained in the Hazardous Materials Uniform Safety Act of 1990 permits current law to be read as providing for complete OSHA—as well as DOT—jurisdiction over hazardous materials transportation. In DOT's explanation of its proposed amendments, the Department states that section 5106 should be deleted because it creates confusion over OSHA's and DOT's hazardous materials transportation jurisdiction. DOT's amendment would eliminate this problem by giving DOT basic jurisdiction and limiting OSHA jurisdiction, thus avoiding duplicate authority. AAR supports DOT's proposed modification.

AAR appreciates this opportunity to submit testimony for the hearing record in connection with the reauthorization of the Nation's hazardous materials transportation program.

 PREPARED STATEMENT OF THE COMPRESSED GAS ASSOCIATION, INC.

The Compressed Gas Association (CGA) represents companies that produce and distribute industrial gases and cryogenic liquids in the U.S., Canada and Mexico. Industrial gases are extensively used in all aspects of industry from mining to steel and aluminum making, to chemicals, pharmaceuticals, semiconductor, auto manufacture, to food manufacture and distribution, beverage dispensing, and to health care, medicine and dentistry. Yet all of our industry's products are considered hazardous and fall under the jurisdiction of the Office of Hazardous Materials Safety (OHMS) of the U.S. Department of Transportation's (DOT) Research and Special Programs Administration (RSPA).

The ability to transport hazardous materials is important to our industry and our economy. The authority of our government to ensure the safe, secure and efficient transportation of hazardous materials is essential to the industrial gases industry and the entire economy.

The hazardous materials transportation industry in the United States is comprised of producers and distributors of chemical and petroleum products and waste, transporters by rail, highway, air and vessel, and manufacturers of containers. There are 500,000 shipments daily—more than 180 million shipments a year. It is a trillion dollar industry that employs millions of Americans. Hazardous materials include chemicals, petroleum products, explosives, industrial and medical gases, hazardous wastes, radioactive wastes and consumer goods such as fingernail polish, household cleansers, and swimming pool additives. Hazardous materials are used every day by every American. They are on every railroad and highway, and at every shipping and airport terminal in the United States and abroad. They are essential to our quality of life, provide jobs for millions of Americans and, as a major export, enhance our trade balance.

The commonality of these materials in transportation is that they can be very dangerous if not handled, packaged, marked and transported in a safe manner. The safety record of this industry is extraordinary considering the potential of these materials to cause serious harm. OHMS, to the extent its budget allows, works cooperatively with the State and local governments, many Federal and international agencies and the many constituencies impacted by the program including the regulated industry, the public, and safety and environmental groups.

The CGA supports the Federal hazardous materials program for safety reasons but also because it assures the efficiency of the movement of these materials between modes, within and between States and between the United States and points abroad. This is important to our Nation's economy and, of course the hazardous materials transportation industry itself. The significance of this business, both domestically and internationally, to the economy and the potential impact on public safety and health, and the environment makes this a necessary and proper Federal program.

We believe the current program is providing for a safe and efficient national hazardous transportation program. To ensure that the program will continue to maintain and improve safety, we urge that you reauthorize the Hazardous Materials Transportation Act. There are improvements that can be made to this extraordinary program and we would be pleased to work with you to assure that the hazardous

materials program remains strong and responsive to the needs of the public and the transportation community.

In addition to the comments of the Interested Parties for HMTA Reauthorization, which we endorse, specific areas of concern to the industrial gas industry are:

- It is proposed that "exemptions" be replaced with "special permits" and that they be reviewed every 4 years instead of 2 years. We believe this is a significant improvement and we further encourage the development of a well understood process to incorporate special permits into the code when they have proven to be safe and effective.

- International harmonization is an increasingly important aspect of enhancing the safe shipment of hazardous materials, both domestically and globally. Support for international harmonization should increase as international business grows. It is vitally important that those involved in regulating hazardous materials transportation provide leadership in international standard setting.

- Expertise in hazardous materials transportation is essential in maintaining and improving our Nation's hazardous materials transportation system. The OHMS has been losing personnel and expertise because of a disparity in pay grades and promotion opportunities at other agencies with the DOT. This loss of expertise is a serious impediment to OHMS's ability to continue the quality of work and service that has distinguished OHMS in the past. The lack of promotional opportunities compromises OHMS' ability to recruit and retain good people.

In conclusion, we support the reauthorization of the Hazardous Materials Transportation Act and a strong, responsive, efficient and well funded hazardous materials safety program.



ISBN 0-16-055908-1



